



## City of Newburgh Council Work Session

6:00 pm  
June 16, 2011

### AGENDA

1. Procedural Items related to the City Council meeting on June 20, 2011:
  - a. Minutes of the meeting of May 23, 2011
  - b. Notices of Claim
  - c. Monthly reports
2. Finance Department:
  - a. 2010 Financial Report – Dominick Consolo, O'Connor, Davies, Munns & Dobbins, LLP
  - b. Monthly cash report
  - c. Sanitation billing : Cheryl Gross
  - d. (Res. 116) Extension of the agreement with Dwight Hadley
  - e. Sewer Unit Calculations:
    - (Local Law No. 4) Amending Section 248 entitled "Imposition; Method of Determination" within the Code of Ordinance of the City of Newburgh
    - (Ord. 10) amending Chapter 248-38 entitled "Water Rates; Service" within the Code of Ordinances of the City of Newburgh.
    - (Ord. 11) amending Chapter 163 entitled "Fees" within the Code of Ordinances of the City of Newburgh.
  - f. (Res. 120) Contract with Garden State Fireworks, Inc. for the 4<sup>th</sup> of July celebration
  - g. Review of Sanitation RFP
  - h. (Res. No. 121) Resolution authorizing an agreement with Taylor Bio-Mass for solid waste removal
  - i. (Res. 122) Budget transfer from Contingency A1900.1990 to A1330.0110 in the amount of \$10,765 to continue Marie Gida as a temporary employee per attached from request from Tax Collector
  - j. (Res. 123) Budget transfer from Contingency A1900.1990 to the following accounts to cover phone maintenance agreements not budgeted for as follows:
    - A5010.0421 \$3600
    - A7510.0421 \$200
    - A7310.0421 \$3400
    - A1460.0421 \$ 400
    - A7140.0421 \$ 625
  - k. (Res. 124) Lease of a copier for DPW in the amount of \$199.55/month for 48 months (Agreement to follow)

- l. (Res. 125) Budget transfer from Water Contingency F1900.1990 to F8330.0421 in the amount of \$200 to cover phone maintenance agreement not budgeted for
- m. (Res. 126) Budget transfer from Sewer Contingency G1900.1990 to G8130.0421 in the amount of \$1300 to cover phone maintenance agreements not budgeted for
- n. (Res. 127) Budget transfer from Contingency A1900.1990 to A1315.0455 in the amount of \$46,800.00 for Dwight Hadley's professional consulting services

3. Planning and Development/Real Estate

- a. (Res. 128) Resolution scheduling a public hearing for July 11 regarding the City's Housing and Community Development Plan for 2012.
- b. CDBG Adjusted Budget – see memo
- c. 2011 Art Bus Shuttle- see memo
- d. (Res. 117) Request to amend the grantee of auction property located at 61 William Street
- e. (Res. 118) Rejection of the auction bid for property located at 39 Lutheran Street
- f. (Res. 119) Authorizing the private-sale conveyance of 154 William Street to Steve Saunders and Beverly Ransom for the total purchase price of \$7,758.28.
- g. Discussion of possible tax incentives for business and homeowners

4. Engineering:

- a. Results of the NYSERDA study

5. Discussion Items:

- a. Vending Permits
- b. School safety zones- (proposed ordinance attached)

6. Executive Session:

- a. Settlements of litigation

RESOLUTION NO.: 116 - 2011

OF

JUNE 20, 2011

**A RESOLUTION AUTHORIZING AN AGREEMENT BETWEEN  
THE CITY OF NEWBURGH AND J. DWIGHT HADLEY, CPA FOR  
PROFESSIONAL CONSULTING SERVICES IN THE AREA  
OF GOVERNMENTAL ADMINISTRATIVE AND FINANCIAL MANAGEMENT**

WHEREAS, this Council, by Resolution No.: 14-2010 of January 11, 2010, authorized the City Manager to enter into an agreement with J. Dwight Hadley, CPA for professional consulting services which expired on March 31, 2010; and

WHEREAS, this Council, by Resolution No.: 74-2010 of March 22, 2010, authorized the City Manager to extend the agreement with J. Dwight Hadley, CPA for professional consulting services which expired on June 30, 2010; and

WHEREAS, this Council, by Resolution No.: 129-2010 of June 14, 2010, authorized the City Manager to extend the agreement with J. Dwight Hadley, CPA for professional consulting services which will expire on December 31, 2010; and

WHEREAS, this Council, by Resolution No.: 273-2010 of December 13, 2010, authorized the City Manager to extend the agreement with J. Dwight Hadley, CPA for professional consulting services which will expire on June 30, 2011; and

WHEREAS, the City of Newburgh wishes to enter into an agreement to provide for an additional six (6) months of service; and

WHEREAS, the agreement is for providing assistance in the area of governmental administrative and financial management in the form of consulting services; and

WHEREAS, the rate for these services is \$70.00 per hour with a minimum of sixteen (16) hours per week; and

WHEREAS, this Council has determined that entering into this agreement is in the best interests of the City of Newburgh;

NOW, THEREFORE BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into the agreement with J. Dwight Hadley, CPA, in substantially the same form as annexed hereto with any other provision that Corporation Counsel may require, at a rate of \$70.00 per hour for consulting services in the area of governmental administrative and financial management.

## AGREEMENT FOR VENDOR SERVICES

THIS AGREEMENT is entered into as of this \_\_\_\_\_ day of June, 2011, by and between the CITY OF NEWBURGH, a municipal corporation chartered under the authority of the State of New York, hereinafter referred to as the "CITY," with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550; and J. DWIGHT HADLEY, CPA, an individual with an address of 14 Mountain Way, Clifton Park, New York 12065, hereinafter referred to as "VENDOR."

### ARTICLE 1. SCOPE OF WORK

VENDOR agrees to perform the SERVICES and/or supply the goods identified in Schedule A, (the "SERVICES") which is attached to, and is part of this Agreement. VENDOR agrees to perform the SERVICES and/or supply the goods in accordance with the terms and conditions of this Agreement. It is specifically agreed that the CITY will not compensate VENDOR for any SERVICES and/or goods provided outside those specifically identified in Schedule A.

Any and all reports, documents, charts, graphs, maps, designs, images, photographs, computer programs and software, artwork, creative works, compositions, and the rights to employ, publish, disseminate, amend or otherwise use same, and/or any other intellectual property to be provided by VENDOR to CITY under the terms of this Agreement shall become the property of the CITY, unless otherwise provided for by the parties. As such, CITY, in its sole discretion, shall have the right to use, copy, disseminate and otherwise employ or dispose of such material in any manner as it may decide with no duty of compensation or liability therefore to VENDOR or to third parties. VENDOR shall have the affirmative obligation to notify CITY in a timely fashion of any and all limitations, restrictions or proprietary rights to such intellectual property and/or materials which may be applicable which would have the effect of restricting or limiting the exercise of the CITY's rights regarding same. VENDOR agrees to defend, indemnify and hold harmless the CITY for failing to notify CITY of same.

### ARTICLE 2. TERM OF AGREEMENT

VENDOR agrees to perform the SERVICES and/or supply goods beginning July 1, 2011, and ending on December 31, 2011 or upon termination as provided under ARTICLE 17 TERMINATION of this Agreement.

### ARTICLE 3. COMPENSATION

For satisfactory performance of the SERVICES and/or receipt of conforming goods or, as such SERVICES or goods may be modified by mutual written agreement, the CITY agrees to compensate VENDOR in accordance with the fees and expenses as stated in Schedule B, which is attached to and is part of this Agreement. VENDOR SHALL submit to the CITY a monthly itemized invoice for SERVICES rendered during the prior month, or as otherwise set forth in Schedule B, and prepared in such form and supported by such documents as the CITY may reasonably require. The CITY will pay the proper amounts due VENDOR within fourteen (14) days after receipt of a CITY Claimant's Certification form, and if the Claimant's Certification form is objectionable, will notify VENDOR, in writing, of the CITY'S reasons for objecting to all or any portion of the invoice submitted by VENDOR.

### ARTICLE 4. EXECUTORY CLAUSE

The CITY shall have no liability under this Agreement to VENDOR or to anyone else beyond funds appropriated and available for this Agreement.

## ARTICLE 5. PROCUREMENT OF AGREEMENT

VENDOR represents and warrants that no person or selling agency has been employed or retained by VENDOR to solicit or secure this Agreement upon an agreement or upon an understanding for a commission, percentage, a brokerage fee, contingent fee or any other compensation. VENDOR further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. VENDOR makes such representations and warranties to induce the CITY to enter into this Agreement and the CITY relies upon such representations and warranties in the execution hereof.

For a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

## ARTICLE 6. CONFLICT OF INTEREST

VENDOR represents and warrants that neither it nor any of its directors, officers, members, partners or employees, have any interest nor shall they acquire any interest, directly or indirectly which would or may conflict in any manner or degree with the performance or rendering of the SERVICES herein provided. VENDOR further represents and warrants that in the performance of this Agreement, no person having such interest or possible interest shall be employed by it and that no elected official or other officer or employee of the CITY, nor any person whose salary is payable, in whole

or in part, by the CITY, or any corporation, partnership or association in which such official, officer or employee is directly or indirectly interested shall have any such interest, direct or indirect, in this Agreement or in the proceeds thereof, unless such person submits a letter disclosing such an interest, or the appearance or potential of same, to the City Manager and a copy to the Corporation Counsel of the CITY in advance of the negotiation and execution of this Agreement.

For failure to submit such letter of disclosure, or for a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim for, or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if elected, shall not constitute the sole remedy afforded the CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment or to take any other action provided for by law, in equity or pursuant to this Agreement.

## ARTICLE 7. INDEPENDENT CONTRACTOR

In performing the SERVICES and/or supplying goods and incurring expenses under this Agreement, VENDOR shall operate as, and have the status of, an independent contractor and shall not act as agent, or be an agent, of the CITY. As an independent contractor, VENDOR shall be solely responsible for determining the means and methods of performing the SERVICES and/or supplying of the goods and shall have complete charge and responsibility for VENDOR'S personnel engaged in the performance of the same.

In accordance with such status as independent contractor, VENDOR covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be officers or employees of the CITY, or of any department, agency or

unit thereof by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the CITY including, but not limited to, Worker's Compensation coverage, health coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

#### ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING

VENDOR shall not assign any of its rights, interest or obligations under this Agreement, or subcontract any of the SERVICES to be performed by it under this Agreement, without the prior express written consent of the City Manager of the CITY. Any such subcontract, assignment, transfer, conveyance, or other disposition without such prior consent shall be void and any SERVICES provided thereunder will not be compensated. Any subcontract or assignment properly consented to by the CITY shall be subject to all of the terms and conditions of this Agreement.

Failure of VENDOR to obtain any required consent to any assignment, shall be grounds for termination for cause, at the option of the CITY and if so terminated, the CITY shall thereupon be relieved and discharged from any further liability and obligation to VENDOR, its assignees or transferees, and all monies that may become due under this Agreement shall be forfeited to the CITY except so much thereof as may be necessary to pay VENDOR'S employees for past service.

The provisions of this clause shall not hinder, prevent, or affect any assignment by VENDOR for the benefit of its creditors made pursuant to the laws of the State of New York.

This agreement may be assigned by the CITY to any corporation, agency, municipality or instrumentality having authority to accept such assignment.

#### ARTICLE 10. BOOKS AND RECORDS

VENDOR agrees to maintain separate and accurate books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

#### ARTICLE 11. RETENTION OF RECORDS

VENDOR agrees to retain all books, records and other documents relevant to this Agreement for six (6) years after the final payment or termination of this Agreement, whichever later occurs. CITY, or any State and/or Federal auditors, and any other persons duly authorized by the CITY, shall have full access and the right to examine any of said materials during said period.

#### ARTICLE 12. AUDIT BY THE CITY AND OTHERS

All Claimant Certification forms or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said Claimant's Certification forms or invoices are based are subject to audit by the CITY. VENDOR shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the CITY so that it may evaluate the reasonableness of the charges, and VENDOR shall make its records available to the CITY upon request. All books, Claimant's Certification forms, records, reports, cancelled checks and any and all similar material may be subject to periodic inspection, review and audit by the CITY, the State of New York, the federal government, and/or other persons duly authorized by the CITY. Such audits may include examination and review of the source and application of all funds whether from the CITY, State, the federal government, private sources or otherwise. VENDOR shall not be entitled to any interim or final payment under this Agreement if any audit

requirements and/or requests have not been satisfactorily met.

### ARTICLE 13. INSURANCE

For all of the SERVICES set forth herein and as hereinafter amended, VENDOR shall maintain or cause to be maintained, in full force and effect during the term of this Agreement, at its expense, insurance as may be required by law. Such policies are to be in the broadest form available on usual commercial terms and shall be written by insurers of recognized financial standing satisfactory to the CITY who have been fully informed as to the nature of the SERVICES to be performed. Where applicable, the CITY shall be an additional insured on all such policies with the understanding that any obligations imposed upon the insured (including, without limitation, the liability to pay premiums) shall be the sole obligation of VENDOR and not those of the CITY. Notwithstanding anything to the contrary in this Agreement, VENDOR irrevocably waives all claims against the CITY for all losses, damages, claims or expenses resulting from risks commercially insurable under this insurance described in this Article 13. The provisions of insurance by VENDOR shall not in any way limit VENDOR'S liability under this Agreement.

To the extent it is commercially available, each policy of insurance shall be provided on an "occurrence" basis. If any insurance is not so commercially available on an "occurrence" basis, it shall be provided on a "claims made" basis, and all such "claims made" policies shall provide that:

- A. Policy retroactive dates coincide with or precede VENDOR'S start of the performance of this Agreement (including subsequent policies purchased as renewals or replacements);
- B. VENDOR will maintain similar insurance for at least six (6) years following final acceptance of the SERVICES;
- C. If the insurance is terminated for any reason, VENDOR agrees to purchase an

unlimited extended reporting provision to report claims arising from the SERVICES performed or goods provided for the CITY; and

D. Immediate notice shall be given to the CITY through the City Manager of circumstances or incidents that might give rise to future claims with respect to the SERVICES performed under this Agreement.

### ARTICLE 14. INDEMNIFICATION

VENDOR agrees to defend, indemnify and hold harmless the CITY, including its officials, employees and agents, against all claims, losses, damages, liabilities, costs or expenses (including, without limitation, reasonable attorney fees and costs of litigation and/or settlement), whether incurred as a result of a claim by a third party or any other person or entity, arising out of the SERVICES performed and/or goods supplied pursuant to this Agreement which the CITY or its officials, employees or agents, may suffer by reason of any negligence, fault, act or omission of VENDOR, its employees, representatives, subcontractors, assignees, or agents.

### ARTICLE 15. PROTECTION OF CITY PROPERTY

VENDOR assumes the risk of and shall be responsible for, any loss or damage to CITY property, including property and equipment leased by the CITY, used in the performance of this Agreement and caused, either directly or indirectly by the acts, conduct, omissions or lack of good faith of VENDOR, its officers, directors, members, partners, employees, representatives or assignees, or any person, firm, company, agent or others engaged by VENDOR as an expert consultant specialist or subcontractor hereunder.

In the event that any such CITY property is lost or damaged, except for normal wear and tear, then the CITY shall have the right to withhold further payments hereunder for the purposes of set-off in sufficient sums to cover such loss or damage.



VENDOR agrees to defend, indemnify and hold the CITY harmless from any and all liability or claim for loss, cost, damage or expense (including, without limitation, reasonable attorney fees and costs of litigation and/or settlement) due to any such loss or damage to any such CITY property described in this Article.

The rights and remedies of the CITY provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or by this Agreement.

#### ARTICLE 16. CONFIDENTIAL INFORMATION

In the course of providing the SERVICES and/or goods hereunder, VENDOR may acquire knowledge or come into possession of confidential, sensitive or proprietary information belonging to CITY. VENDOR agrees that it will keep and maintain such information securely and confidentially, and not disclose such information to any third parties, including the media, nor use such information in any manner publically or privately, without receiving the prior approval, in writing, of the CITY authorizing such use. VENDOR'S obligations under this clause to maintain the confidentiality of such information and to refrain from using such information in any manner without the prior written approval of the CITY shall survive the termination or expiration of this Agreement.

#### ARTICLE 17. TERMINATION

The CITY may, by written notice to VENDOR effective thirty (30) days after mailing, terminate this Agreement in whole or in part at any time (i) for CITY'S convenience, (ii) upon the failure of VENDOR to comply with any of the terms or conditions of this agreement, or (iii) upon the VENDOR becoming insolvent or bankrupt. The VENDOR may, by written notice to CITY effective thirty (30) days after mailing terminate this Agreement in whole or in part at any time (i) for VENDOR'S convenience, (ii) upon the failure of the

CITY to comply with any terms and conditions of this Agreement, or (iii) upon the City becoming insolvent or bankrupt.

Upon termination of this Agreement, the VENDOR shall comply with any and all CITY closeout procedures, including, but not limited to:

A. Accounting for and refunding to the CITY within thirty (30) days, any unexpended funds which have been paid to VENDOR pursuant to this Agreement; and

B. Furnishing within thirty (30) days an inventory to the CITY of all equipment, appurtenances and property purchased by VENDOR through or provided under this Agreement, and carrying out any CITY directive concerning the disposition thereof.

In the event either party terminates this Agreement, as provided in this Article, the CITY may procure, upon such terms and in such manner as deemed appropriate, SERVICES similar to those so terminated,

Notwithstanding any other provision of this Agreement, VENDOR shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of VENDOR'S breach of the Agreement or failure to perform in accordance with applicable standards, and the CITY may withhold payments to VENDOR for the purposes of set-off until such time as the exact amount of damages due to the CITY from VENDOR is determined.

The rights and remedies of the CITY provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

#### ARTICLE 18. GENERAL RELEASE

The acceptance by VENDOR or its assignees of the final payment under this Agreement, whether by Claimant's Certification form, judgment of any court of competent jurisdiction, or administrative means shall constitute and operate as a general release to

the CITY from any and all claims of  
VENDOR arising out of the performance of  
this Agreement.

#### ARTICLE 19. SET-OFF RIGHTS

The CITY shall have all of its common law,  
equitable and statutory rights of set-off.  
These rights shall include, but are not limited  
to, the CITY'S right to withhold for the  
purposes of set-off any monies otherwise due  
VENDOR (i) under this Agreement, (ii)  
under any other agreement or contract with  
the CITY, including any agreement or  
contract for a term commencing prior to or  
after the term of this Agreement, (iii) from  
the CITY by operation of law, the CITY also  
has the right to withhold any monies  
otherwise due under this Agreement for the  
purposes of set-off as to any amounts due and  
owing to the CITY for any reason whatsoever  
including, without limitation, tax  
delinquencies, fee delinquencies or monetary  
penalties or interest relative thereto.

#### ARTICLE 20. NO ARBITRATION

Any and all disputes involving this  
Agreement, including the breach or alleged  
breach thereof, may not be submitted to  
arbitration unless specifically agreed thereto  
in writing by the City Manger of the CITY,  
but must instead only be heard in the  
Supreme Court of the State of New York,  
with venue in Orange County or if  
appropriate, in the Federal District Court  
with venue in the Southern District of New  
York, White Plains division.

#### ARTICLE 21. GOVERNING LAW

This Agreement shall be governed by the laws  
of the State of New York. VENDOR shall  
render all SERVICES under this Agreement  
in accordance with applicable provisions of  
all federal, state and local laws, rules and  
regulations as are in effect at the time such  
SERVICES are rendered.

#### ARTICLE 22. CURRENT OR FORMER CITY EMPLOYEES

VENDOR represents and warrants that it  
shall not retain the SERVICES of any CITY  
employee or former CITY employee in  
connection with this Agreement or any other  
agreement that said VENDOR has or may  
have with the CITY without the express  
written permission of the CITY. This  
limitation period covers the preceding three  
(3) years or longer if the CITY employee or  
former CITY employee has or may have an  
actual or perceived conflict of interests due to  
their position with the CITY.

For a breach or violation of such  
representations or warranties, the CITY shall  
have the right to annul this Agreement  
without liability, entitling the CITY to  
recover all monies paid hereunder and  
VENDOR shall not make claim for or be  
entitled to recover, any sum or sums  
otherwise due under this Agreement. This  
remedy, if effected, shall not constitute the  
sole remedy afforded the CITY for such  
falsity or breach, nor shall it constitute a  
waiver of the CITY'S right to claim damages  
or otherwise refuse payment or to take any  
other action provided for by law or pursuant  
to this Agreement.

#### ARTICLE 23. ENTIRE AGREEMENT

The rights and obligations of the parties and  
their respective agents, successors and  
assignees shall be subject to and governed by  
this Agreement, including Schedules A and  
B, which supersede any other understandings  
or writings between or among the parties.

#### ARTICLE 24. MODIFICATION

No changes, amendments or modifications of  
any of the terms and/or conditions of this  
Agreement shall be valid unless reduced to  
writing and signed by the party to be bound.  
Changes in the scope of SERVICES in this  
Agreement shall not be binding, and no  
payment shall be due in connection  
therewith, unless prior to the performance of  
any such SERVICES, the City Manager of  
the CITY, after consultation with the

Department Head and Corporation Counsel, executes an Addendum or Change Order to this Agreement, which Addendum or Change Order shall specifically set forth the scope of such extra or additional SERVICES and the amount of compensation and the extension of the time for performance, if any, for any such SERVICES. Unless otherwise

specifically provided for therein, the provisions of this Agreement shall apply with full force and effect to the terms and conditions contained in such Addendum or Change Order.

IN WITNESS THEREOF, the parties hereto have executed this Agreement as of the date set forth above.

THE CITY OF NEWBURGH

VENDOR

BY: \_\_\_\_\_  
RICHARD F. HERBEK  
ACTING CITY MANAGER

BY: \_\_\_\_\_  
J. DWIGHT HADLEY  
TITLE: CPA

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
MICHELLE KELSON,  
Corporation Counsel

\_\_\_\_\_  
CHERYL A. GROSS,  
City Comptroller

SCHEDULE A  
SCOPE OF SERVICES

J. Dwight Hadley, CPA

#### SCOPE OF SERVICES (July – December 2011)

I shall be available, upon requested of the City Manager and the City Comptroller, a minimum of sixteen (16) hours per week and will provide the City professional financial consulting services focused on the following areas:

- Provide assistance in preparing the multi-year financial forecast and addressing other issues related to the Newburgh Fiscal Stability Authority (NFAS).
- Provide assistance in coordination with fiscal advisor, bond counsel, and rating agencies for the debt issues to be financed in August and November 2011.
- Provide input and support regarding the negotiations of union contracts and related personnel policies and procedures.
- Provide assistance with resolving prior year open audit issues with the U.S. Department of Urban Renewal.
- Provide assistance in preparing and evaluating a RFP regarding refuse collection.
- Provide assistance on identifying revenue enhancements and cost reductions that can be implemented during 2011-12, including specifically parking revenue opportunities.
- Provide assistance in completing the establishment of the various grants, capital projects and the fixed asset records required to be maintain by the City.
- Provide assistance in preparing operating and capital budgets for 2012.
- Provide assistance to Finance Department staff in recording financial transactions, establishing appropriate internal controls, and preparing financial statements.
- Provide assistance with the implementation of new technology systems and related operating procedures and internal controls.
- Provide assistance with the financial review of the RFQ submissions received for the Mid-Broadway project.
- Provide assistance with the negotiations with the Towns of Newburgh and New Winsor regarding the sale of City water
- Such other financial services mutually agreed to with the City Manager.

## SCHEDULE B

### FEES AND EXPENSES

**RATE:** In consideration for the consulting services described in Schedule "A" above, the CITY shall pay the VENDOR at the rate of seventy (\$70.00) dollars per hour plus expenses, as defined below, payable within fourteen (14) days after invoices for such services rendered are received by the City.

**EXPENSES:** The CITY will reimburse the VENDOR for reasonable and necessary travel, meals, lodging and incidental expenses incurred in traveling to/from the City of Newburgh estimated at approximately three hundred (\$300.00) dollars per week. Any request by the CITY to travel to other locations beyond the City's geographic boundaries shall be pre-approved in writing by the CITY. Written documentation and receipts itemizing by date incurred all amounts expended will be submitted for reimbursement within fourteen (14) days of receipt by City.

LOCAL LAW NO.: 4 - 2011

OF

JUNE 20, 2011

A LOCAL LAW AMENDING SECTION 248-1  
ENTITLED "IMPOSITION; METHOD OF DETERMINATION"  
WITHIN THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH

BE IT ENACTED, by the Council of the City of Newburgh, New York as follows:

§ 248-1. Imposition; method of determination.

There is hereby established and imposed sewerage facilities rents and sewer use rents, which rents are to be imposed upon the owners of real property and which rents are to be determined as follows:

A. ~~Sewerage facilities rents.~~ Sewer Facility Unit Charge.

~~(1) Each single family dwelling will be assigned a value of one unit.~~

~~(2) Each multiple family housing structure and apartment house will be assigned a value of one unit for the first dwelling unit and 3/4 of a unit for each additional dwelling unit contained within the housing structure or apartment house. A "dwelling unit" shall be defined as a room or group of rooms occupied or intended for occupancy as separate living quarters and having direct access from the outside or through a common hall.~~

~~(3) All other properties within the city, other than single family dwellings, multiple family housing structures and apartment houses, will be assigned one unit for every \$30,000 of their total assessed value (approved prior to applying exceptions, abatements, etc.).~~

~~(4)~~ (1) The sum of all units derived in the manner described in Subsection A(1), (2) and (3) above set forth in Chapter 163, Fees shall be divided into the annual cost of debt service to determine the sewerage facilities unit charge.

~~(5)~~ (2) The owner of each property in the City shall pay a sewerage facility unit charge equal to the number of units assigned to that property multiplied by the sewerage facilities unit charge determined in Subsection A(4) A(1) above.

| ~~(6)~~(3) The minimum sewer facility unit charge shall be as set forth in Chapter 163, Fees, of this Code.

This Local Law shall take effect on January 1, 2012.

| Matter ~~stricken~~ deleted.  
Matter underlined added



ORDINANCE NO.: 10 - 2011

OF

JUNE 20, 2011

AN ORDINANCE AMENDING CHAPTER 248-38  
ENTITLED "WATER RATES; SERVICE"  
OF THE CODE OF THE CITY OF NEWBURGH

BE IT ORDAINED, by the Council of the City of Newburgh, New York that Chapter 248-38, entitled "Water rates; service" of the Code of the City of Newburgh be and is hereby amended as follows:

Section 1. § 248-38. Water rates; service.

C. Water Facility Unit Charge. The sum of all units derived in the manner set forth in Chapter 163, Fees shall be divided into the annual cost of debt service to determine the water facility unit charge. The owner of each property in the City shall pay a water facility unit charge equal to the number of units assigned to that property multiplied by the water facility unit charge. The minimum water facility unit charge shall be as set forth in Chapter 163, Fees, of this Code.

Section 2. This Ordinance shall take effect on January 1, 2012

Matter ~~stricken~~ deleted.

Matter underlined added.

ORDINANCE NO.: 11 - 2011

OF

JUNE 20, 2011

AN ORDINANCE AMENDING CHAPTER 163  
ENTITLED "FEES" OF THE CODE  
OF THE CITY OF NEWBURGH

BE IT ORDAINED by the City Council of the City of Newburgh that:

Section 1. Chapter 163 entitled "Fees" of the Code of the City of Newburgh be and hereby is amended as follows:

§ 163-1. Applicability.

Notwithstanding any other provision in this Code, the following schedule of fees is hereby established with respect to licenses, permits, registrations, applications, subscriptions and activities required or regulated under the provisions of the Code of the City of Newburgh. Specific requirements and regulations shall be as set forth in the chapter to which reference is made below. The following schedule of fees shall remain in effect until rescinded or amended.

Code Section	Type of Fee	Amount
§ 248-1	Minimum sewer charge	\$1.00 per quarter
<u>§ 248-1.A</u>	<u>Sewer Facility Unit Charge</u>	<u>Each single-family dwelling will be assigned one unit</u>
		<u>Each two-family dwelling will be assigned 1.75 units</u>
		<u>Each three-family dwelling will be assigned 2.5 units</u>
		<u>Each four-family dwelling will be assigned 3.25 units</u>

Strikethrough denotes deletions  
Underlining denotes additions

All other properties with improvements within the City, other than one, two, three and four family dwellings, will be assigned one unit for every \$30,000 in their total assessed value (approved prior to applying exemptions, abatements, etc.)

All other properties without improvements within the City will be assigned one unit.

§ 293-38 Quarterly metered water rates

Quarterly metered rates per 1,000 gallons

First 1,000 gallons                      Inside City: \$5.570  
   Outside City: \$8.360.

Additional usage will be charged at a flat rate of \$5.570 (\$8.3690 outside City) per 1,000 gallons.

Minimum quarterly charge.

Meter Size (inches)	Gallons Allowed	Inside City	Outside City
+5/8	6,000	\$33.42	\$50.16
3/4	14,000	\$77.98	\$117.04
1	24,000	\$133.68	\$200.64
1 1/2	42,000	\$233.94	\$351.12
2	83,000	\$462.31	\$693.88
3	120,000	\$668.40	\$1,003.20
4	180,000	\$1,002.60	\$1,504.80
6	315,000	\$1,754.55	\$2,633.40
8	675,000	\$3,759.75	\$5,643.00

~~Strikethrough~~ denotes deletions  
Underlining denotes additions

A surcharge shall be added to the above charges for water services in the amount of 14%. This extra charge is made for the purpose of financing the cost of obtaining water from the New York City Aqueduct. Such surcharge shall be effective on October 1, 1981, and shall continue to be made in every quarterly billing period in which any water is taken from the Aqueduct tap.

Water Facility Unit Charge

Each single-family dwelling will be assigned one unit

Each two-family dwelling will be assigned 1.75 units

Each three-family dwelling will be assigned 2.5 units

Each four-family dwelling will be assigned 3.25 units

All other properties with improvement within the City, other than one, two, and three and four family dwellings, will be assigned one unit for every \$30,000.00 in their total assessed value (approved prior to applying exceptions, exemptions abatements, etc.)

All other properties without improvements within the City will be assigned one unit.

~~Quarterly water facility charge~~ ~~\$7.30 per unit as determined above~~

Minimum water facility charge \$1.00 per quarter

Hydrant charge, outside City \$64 per hydrant per year

Section 2. This Ordinance shall take effect of January 1, 2012

~~Strikethrough~~ denotes deletions  
Underlining denotes additions

RESOLUTION NO.: 120 - 2011

OF

JUNE 20, 2011

A RESOLUTION AUTHORIZING THE EXECUTION  
OF A CONTRACT WITH GARDEN STATE FIREWORKS, INC.  
FOR THE CITY OF NEWBURGH FOURTH OF JULY CELEBRATION  
FOR THE DISPLAY OF JULY 4, 2011  
AT A COST OF SIX THOUSAND FIVE HUNDRED DOLLARS

WHEREAS, the City of Newburgh issued Requests for Quotations for Fireworks for the City of Newburgh's 2011 Fourth of July celebration; and

WHEREAS, four quotes were duly received and opened; and

WHEREAS, Garden State Fireworks, Inc. was the low bidder at a cost of Six Thousand Five Hundred (\$6,500.00) Dollars; and

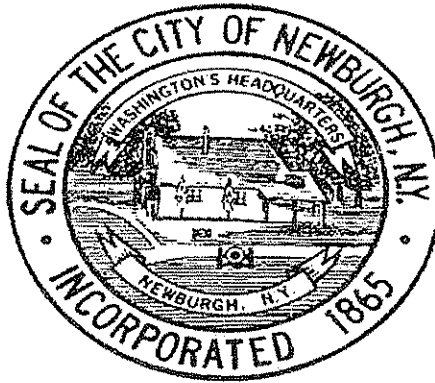
WHEREAS, the City of Newburgh wishes to enter into a contract with Garden State Fireworks, Inc. to conduct fireworks displays at the Newburgh Waterfront on July 4, 2011 at a cost of Six Thousand Five Hundred (\$6,500.00) Dollars; and

WHEREAS; should there be a rain event, or other circumstances beyond the City's control which prevent such fireworks to be launched on July 4, 2011, the rain date will be July 9, 2011; and

WHEREAS, the City Council has determined it to be in the best interests of the City of Newburgh to enter into a contract with Garden State Fireworks, Inc.;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the Acting City Manager is hereby authorized to execute and enter into a contract, in a form subject to approval of Corporation Counsel with such other terms and conditions as Counsel may require, on behalf of the City of Newburgh, in the total amount of Six Thousand Five Hundred (\$6,500.00) Dollars.

**DRAFT**  
**CITY OF NEWBURGH**  
**NEW YORK**



**REQUEST FOR PROPOSALS**  
**FOR**  
**RESIDENTIAL COLLECTION AND DISPOSAL OF**  
**WASTE REFUSE AND RECYCLABLE MATERIALS**

**RFP RESPONSE DEADLINE:**  
3:00 P.M., LOCAL TIME, WEDNESDAY, JULY 20, 2010

**CHERYL A. GROSS**  
**CITY COMPTROLLER**

**CITY OF NEWBURGH**  
**CITY HALL – COMPTROLLER'S OFFICE**  
**83 BROADWAY – 4TH FLOOR**  
**NEWBURGH, NY 12550**  
**(845) 569-7316**

**RFP ISSUE DATE: WEDNESDAY, JUNE 29, 2011**

REQUEST FOR PROPOSALS  
RESIDENTIAL COLLECTION AND DISPOSAL OF WASTE REFUSE AND RECYCLABLE MATERIALS  
CITY OF NEWBURGH, NEW YORK

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**PUBLIC NOTICE**

**REQUEST FOR PROPOSALS  
FOR  
RESIDENTIAL COLLECTION AND DISPOSAL OF  
WASTE REFUSE AND RECYCLABLE MATERIALS**

**DUE: WEDNESDAY, JULY 20, 2011**

**CITY OF NEWBURGH, NEW YORK**

REQUEST FOR PROPOSALS (RFP) WILL BE RECEIVED IN THE OFFICE OF THE CITY COMPTROLLER IN CITY HALL, 83 BROADWAY, 4<sup>TH</sup> FLOOR, NEWBURGH, UNTIL 3:00 P.M. EST, WEDNESDAY, JULY 20, 2011 FOR SERVICES FOR RESIDENTIAL COLLECTION AND DISPOSAL OF WASTE REFUSE AND RECYCLABLE MATERIALS WITHIN THE CITY OF NEWBURGH.

COPIES OF THE RFP MAY BE OBTAINED BY CONTACTING THE OFFICE OF THE CITY COMPTROLLER AT (845) 569-7316 OR VIA EMAIL AT [EGARRISON@CITYOFNEWBURGHNY.GOV](mailto:EGARRISON@CITYOFNEWBURGHNY.GOV). VENDORS MUST PROVIDE THEIR COMPLETE CONTACT INFORMATION WHEN REQUESTING THE RFP BY EMAIL

RESPONSES TO THE RFP SHALL BE DELIVERED TO THE OFFICE OF THE CITY COMPTROLLER BY HAND, OR OTHER COURIER TYPE SERVICES ON OR BEFORE THE SPECIFIED TIME FOR DELIVERY. FACSIMILE OR ELECTRONIC MAIL SUBMITTALS WILL NOT BE ACCEPTED. RESPONDERS ARE REQUIRED TO EXECUTE A NON-COLLUSIVE PROPOSAL CERTIFICATE PURSUANT TO SECTION 103D OF THE GENERAL MUNICIPAL LAWS OF THE STATE OF NEW YORK

THE CITY OF NEWBURGH HEREBY NOTIFIES ALL VENDORS THAT IT WILL AFFIRMATIVELY INSURE THAT IN REGARD TO ANY CONTRACT ENTERED INTO PURSUANT TO THIS NOTICE THAT MINORITY ENTERPRISES WILL BE AFFORDED FULL OPPORTUNITY TO SUBMIT PROPOSALS IN RESPONSE TO THIS INVITATION AND WILL NOT BE DISCRIMINATED AGAINST ON THE GROUNDS OF RACE, COLOR OR NATIONAL ORIGIN IN CONSIDERATION OF AN AWARD.

THE CITY OF NEWBURGH RESERVES THE RIGHT TO REJECT ANY OR ALL SUBMITTED PROPOSALS. CONTRACT AWARD IS SUBJECT TO APPROVAL BY THE CITY COUNCIL.

CHERYL A. GROSS  
CITY COMPTROLLER

DATED: WEDNESDAY JUNE 29, 2011

REQUEST FOR PROPOSALS  
RESIDENTIAL COLLECTION AND DISPOSAL OF WASTE REFUSE AND RECYCLABLE MATERIALS  
CITY OF NEWBURGH, NEW YORK

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**INTRODUCTION:**

THE CITY OF NEWBURGH CURRENTLY OPERATES ITS OWN RESIDENTIAL COLLECTION AND DISPOSAL OF WASTE REFUSE AND RECYCLABLE MATERIAL FROM APPROXIMATELY 2,800 RESIDENTIAL PROPERTIES. COLLECTIONS OF WASTE REFUSE IS PERFORMED TWICE WEEKLY AND SEPARATE COLLECTIONS OF RECYCLABLE MATERIALS IS ALSO PERFORMED TWICE WEEKLY ON DIFFERENT DAYS. SEE EXHIBIT A TO THIS REQUEST FOR PROPOSALS FOR MAPS OF THE CITY AND THE CURRENT COLLECTION SCHEDULES FOR REFUSE AND RECYCLABLES.

**SECTION 1: PURPOSE OF REQUEST:**

1.1 The City of Newburgh (City) is soliciting Requests for Proposals (hereinafter referred to as RFP) for qualified Contractors for the collection of refuse and recyclable materials from one-family, two-family, and three-family residences in the City of Newburgh and disposal of these collected materials at a New York State approved refuse transfer station or sanitary landfill.

1.2 The City's anticipated schedule for this RFP is as follows:

- \*RFP issued – Wednesday, June 29, 2011
- \*Responses due – Wednesday, July 20, 2011
- \*Review of responses completed and contractor selected – Thursday, August 4, 2011
- \*Contract approved by City Council – Monday September 12, 2011.
- \*Collection services to begin – Monday October 3, 2011

1.3 The above schedule is subject to revision by the City and assumes a contractor is selected. The City reserves the right to reject all proposals received at no cost to the City.

1.4 **INTERPRETATIONS:** Any request for interpretation of this RFP shall be made in writing no later than ten (10) days prior to the RFP response due date addressed as follows:

Cheryl Gross, City Comptroller  
RE: RFP for Refuse and Recycling  
City of Newburgh  
83 Broadway – 4<sup>th</sup> Floor.  
Newburgh, NY 12250

Alternatively, such interpretation requests may be emailed or faxed but must be received no later than the aforementioned date and time interpretation deadline as follows:

Email: [cgross@cityofnewburgh-ny.gov](mailto:cgross@cityofnewburgh-ny.gov)



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Fax: (845) 569-7490

- 1.5 Replies will be issued by Addenda mailed or delivered to all parties recorded as having received the RFP. Questions received less than seven (7) days prior to the date of submission of Proposals will not be answered. Only questions answered by formal written Addenda will be binding. Oral or other interpretations or clarifications will be without legal effect.

## SECTION 2: SCOPE OF SERVICES

2.1 WORK: The Contractor shall supply all labor, equipment, materials, insurances and any such other items as may be necessary for satisfactory performance of the work. The work shall include the collection of refuse and recyclable materials from one-family, two-family, and three-family residences in the City of Newburgh and disposal of these collected materials at a New York State approved refuse transfer station, sanitary landfill or recycling center.

2.2 EXCLUSIONS: All multifamily (more than three-family) dwellings, commercial and/or industrial establishments will not be a part of this Request for Proposal or contract.

2.3 REFUSE: "Refuse" shall include putrescible and non-putrescible solid wastes consisting of organic or non-organic materials but shall not include human body waste.

2.4 RECYCLABLE: "Recyclable" shall include newspaper and magazines, flatten cardboard, aluminum and metal cans, glass bottles and jars and plastic containers. But shall not include refuse as defined above, Styrofoam, trash, clothing, food, compost, batteries, yard waste, ceramics or window glass. **The Contractor shall submit their list of acceptable and unacceptable items with their proposal.**

2.5 NON-REFUSE AND RECYCLABLE MATERIALS: Contractor shall establish a service whereby residents can call the Contractor for the pickup of non-refuse or recyclable materials by appointment for a reasonable fee. Such items could include "furniture" items such as sofas, chairs, tables, and "white" metal goods such as hot water tanks, refrigerators, washing machines, dryers, etc. **The Contractor shall submit their proposed fee schedule for the pick-up of such items.**

2.6 YARD WASTE: The Contractor shall establish an annual yard waste pickup period that shall be scheduled to run for four (4) consecutive weeks between October 1<sup>st</sup> and November 15<sup>th</sup> whereby the contractor will pickup and dispose of yard waste at no cost to the residents consisting of grass clippings,

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twigs or leaves placed in recycle bags and tree or bush debris that has been cut to lengths not exceeding four (4) feet and bundled.

2.7 CHRISTMAS TREES: The Contractor shall establish the first and second full weeks in January each year for the pickup of Christmas trees placed at the curb at no cost to the residents.

2.8 OWNERSHIP: All materials collected by the Contractor shall become the property of the Contractor and the Contractor shall be entitled to any value they can recover there from.

2.9 CONTRACTOR'S SCHEDULE: The Contractor shall pickup all refuse and recyclable materials placed at the curbside or within five (5) feet thereto at each residence in the City once each week in accordance with the terms and conditions written herein and as shown on the attached drawing(s) entitled "Weekly Collection Schedule."

2.10 PICKUP HOURS: The Contractor shall perform their pickup between the hours of 6:00 a.m. and 4:00 p.m. to remove the refuse and recyclable materials that have been properly placed at the curb.

2.11 PICKUP DAYS: The Contractor shall pickup refuse and recyclable materials placed at the curb or within two feet thereof from each residence once each week throughout the City according to a fixed collection schedule on Monday through Friday. This schedule may make allowance for adjustments of time for the Contractor's holidays and may be altered by the City Manager of the City in case of an emergency. Contractor's holidays for the following year shall be provided to the City on or before October 1<sup>st</sup> for the following year.

2.12 DELAY DAYS: If, due to unsuitable weather or any other unforeseen circumstances, the Contractor fails to finish the pickup on the days specified in the daily schedule established, the Contractor will proceed with the next day's route and in addition to that, must complete what was left over from the preceding day. The Contractor will exercise due diligence to prevent pickup of any route from being more than 24 hours overdue from the established schedule.

2.13 SCHEDULE CHANGES: Any other changes or departure from the established schedule or pickup, other than "Delay Days," desired by the Contractor shall only be made after ten first notifying the City and then after ten (10) days public notice to the media at the expense of the Contractor. Permanent changes to the current established schedule shall be communicated in writing to each effected residence at least thirty (30) days written notice to the effected residences.

2.14 PICKUP PENALTY: The Contractor may be subject to a penalty of \$50.00 per residence for missed pickups.

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**2.15 REFUSE AND RECYCLABLE CONTAINERS:** The Contractor shall be responsible, at no cost to the City, to provide each residence two numbered 95 gallon wheeled containers that can be rolled to the curb, one for refuse and one for recyclable materials. Residence will be allowed a one-time swap to a smaller 65 or 35 gallon wheel container at no cost.

**2.16 REFUSE VEHICLES:** Each vehicle used in the business of pickup and transportation of refuse and recyclable materials shall be totally enclosed, welded steel, watertight and shall be constructed, maintained and operated so that once refuse and recyclable materials have been loaded, none of it may be reworked, sorted, handled or removed from the body except by dumping the load at an approved transfer station or sanitary landfill. A dump truck or flat bed truck may be used for the pickup of non refuse materials if the load is covered at all times. The Contractor agrees to maintain all equipment in a clean, sanitary and acceptable condition, and in the event of a breakdown of equipment, shall put into service suitable substitute equipment within twenty-four (24) hours. Each vehicle shall be subject to inspection at any time by a designated representative of the City and the Contractor shall be subject to a penalty of \$100 per day for each and every occurrence found unsatisfactory. Contractor shall provide copies of inspections and required permits for each and every vehicle entering the City of Newburgh in use in performing these collection services.

**2.17 PICKUP AND TRANSPORTATION:** The Contractor shall perform all operations in such a manner and by such vehicles as will prevent creation of a nuisance or the loss or discharge of any materials in any public place within or outside the City. The materials shall be covered or treated so that such cannot escape or be assessable to rodents, insects and flies or create a nuisance. All materials picked up shall be transported by the Contractor from and through the streets of the City in a careful manner so that the streets shall not be left littered or in any disorderly manner or condition. The Contractor does further agree that it will exercise due care in the pickup of materials, both in the handling of receptacles or pieces or bundles for transportation to an approved transfer station or sanitary landfill. The Contractor agrees to clean up any unsightly conditions caused by their carelessness or that of their agents or employees in handling any materials during the pickup thereof or falling off the vehicle during transportation.

**2.18 OVERNIGHT PARKING:** Vehicles used in performing these collection services and for the transportation of refuse and recyclable materials shall not be parked overnight anywhere in the City of Newburgh unless empty and only at a location approved by the Superintendent of Public Works.

**2.19 PLACE OF BUSINESS:** The Contractor shall maintain a central office or place of business with a published telephone number. In the event said place of business is not located within the City, the Contractor shall maintain a toll free

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telephone number. In all cases, the Contractor shall have a person available to respond to calls and inquiries during normal business hours.

**2.20 DISAGREEMENTS:** The Contractor shall instruct its workers to be courteous at all times during the execution of the work. Any differences of opinion arising between the Contractor and its employees, and a citizen of the City must be satisfactorily settled by the Contractor. Any unsatisfied disagreements shall be referred to the City Manager for resolution.

**2.21 PERFORMANCE:** The Contractor shall perform the work in accordance with any and all ordinances, regulations and laws governing this work enacted by the City of Newburgh, the County of Orange, the State of New York, and the United States Government.

**2.22 FAILURE TO PERFORM:** In the event of any failure by the Contractor to perform any of the conditions or terms on their part, the City may undertake to perform said work and the Contractor shall pay the City the full cost of such work. The City shall pay for such work out of moneys due, or which hereafter may become due under the terms of this contract.

**2.23 PROTECTION:** The Contractor shall defend, indemnify and save harmless the City from any and all claims, actions, damages, and charges of any kind or nature arising from the negligence or want of care of the Contractor and its employees in the performance of their work.

### **SECTION 3: CONTRACT TERMS AND CONDITIONS**

**3.1** The selected Contractor will be required to execute a written contract with the City of Newburgh. In addition to the Scope of Services as outlined in Section 2 above, the contract with the City shall include the following terms and conditions:

**3.2** The contract period for the refuse and recycling services contemplated by this RFP will be for three (3) years commencing Monday, October 4, 2011 and ending Friday, September 28, 2012. The contract may be extended for additional three year terms subject to the joint written approval of both the City and the Contractor.

**3.3 PRICE ADJUSTMENTS:** Upon successful completion of the first year of the contract term, the Contractor may request an increase in the contract price based upon a fully documented change in the Contractor's cost of operations that occurred as a result of some action or condition beyond the control of the Contractor. An example of such a change would be an increase in the tipping fees charged by the transfer station or landfill. Any increase in the contract price shall be awarded solely at the discretion of the City and any request for such a change may be made only once annually.

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3.4      **PAYMENT:** The Contractor shall submit a properly executed claim form at the end of each month. Payment shall then be processed by the City for payment within thirty (30) days of receipt by the City Comptroller's Office.

3.5      **ASSIGNMENT:** The Contractor agrees not to assign or sublet the contract or any work there under without the prior written approval of the City.

3.6      **EMPLOYEES:** In consideration of this service agreement, the Contractor agrees to give the City's current sanitation employees first preference in hiring workers to perform the refuse and recycling services within the City.

3.7      **PAYROLL:** The Contractor agrees it shall pay every mechanic, laborer, and workers employed in, on or about the work, a wage not less than the prevailing rate of wages as provided under the Labor Law of the State of New York.

3.8      **PERFORMANCE:** The Contractor agrees to perform all work and to furnish all materials necessary in strict accordance with the contract unless written orders describing a specific deviation from the contract has been submitted in writing, reviewed, and approved in writing by the City Manager.

3.9      **INSPECTIONS:** The City shall have the right to designate City inspector for the purpose of ascertaining whether or not the Contractor is performing their the terms of the contract and the Contractor shall allow said inspectors free access to any and all equipment of the Contractor at all times.

3.9      **VIOLATIONS:** If at any time the City finds that work is unnecessarily delayed or the Contractor is willfully violating any provisions or conditions of the contract, or if the work is not completed within the times established, the City shall have the power to notify the Contractor to discontinue all work, or any part thereof, by a written notice from the City Manager to be served at the Contractor's principal place of business or with its agents in charge of the work and thereupon the Contractor shall discontinue all work, or such part thereof, and the City shall have the power to employ such and so many persons or equipment as it deems necessary by contract or otherwise, to complete the work and to charge the expenses thereof to the Contractor. It is further understood and agreed that if the Contractor is declared by the City to have defaulted in the execution of the Contract, the Contractor shall pay the City, in addition to all other costs, \$1,000 per collection day for each day the Contractor is in default, as liquidated damages.

3.10     **TERMINATION:** This contract may be terminated upon ninety (90) days written notice by the City or by mutual agreement of the parties hereto, or upon violation of any of the terms or conditions on this contract as defined herein.

3.11     **SECURITY DEPOSIT:** The Contractor shall give the City a \$50,000 security deposit in a form acceptable to the City to be held in trust for the duration of the contract. The security deposit may be used by the City to pay any violations or

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RESIDENTIAL COLLECTION AND DISPOSAL OF WASTE REFUSE AND RECYCLABLE MATERIALS  
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other cost due from the Contractor and shall be replenished by the Contractor within thirty (30) days if so used. Alternatively, the City may replenish the trust by deducting the amount owed from the next payment due the Contractor.

#### SECTION 4: INSURANCE AND SECURITY REQUIREMENTS

- 4.1 The successful Contractor will be required to procure and maintain at its own expense the following insurance coverage:
- (a) **Workers' Compensation and Disability Insurance:** A policy or policies with minimum coverage amounts required by statutory limits.
  - (b) **Employer's Liability:** A policy or policies with minimum \$500,000 each accident; \$500,000 each employee.
  - (c) **Comprehensive General Liability Insurance (including contractual liability, bodily injury and property damage):** A policy or policies of comprehensive general liability insurance with limits of not less than \$5,000,000 aggregate; \$1,000,000 each occurrence.
  - (c) **Errors and Omission Insurance:** A policy or policies with limits of not less than \$1,000,000.
- 4.2 Each policy of insurance required shall be issued by an insurer licensed to do business in the State of New York, must have an A.M. Best rating of not less than "A," and shall provide that:
- (a) The City of Newburgh is named as an additional named insured.
  - (b) Each policy shall contain clauses to the effect that (i) such insurance shall be primary without right of contribution of any other insurance carried by or on behalf of the City with respect to its interest, (ii) is shall not be cancelled, including, without limitation, for non-payment of premium, or materially amended, without fifteen (15) days prior written notice to the City, directed to the City of Newburgh Corporation Counsel's Office.
  - (c) To the extent it is commercially available, each policy of insurance shall be provided on an "occurrence" basis. If any insurance is not so commercially available on an "occurrence" basis, it shall be provided on a "claims made" basis, and all such "claims made" policies shall provide that:

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1. Policy retroactive dates coincide with or proceed Contractor's start of performance (including subsequent policies purchased as renewals or replacement);
2. If the insurance is terminated for any reason and/or for at least three (3) years following final termination of the services, Contractor will maintain an extended reporting provision and/or similar insurance for the period of performance plus three (3) years from the date of such termination or final acceptance; and
3. Immediate notice shall be given to the City of Newburgh Corporation Counsel's Office of circumstances or incidents that might give rise to future claims with respects to the services performed by the Contractor under its contract with the City.

(d) The insurance policies shall be automatically renewed upon expiration and continued in force unless the City of Newburgh Corporation Counsel Office is given sixty (60) days written notice to the contrary.

- 4.3 No work shall be commenced under the contract until the selected contractor has delivered to the Corporation Counsel or his designee proof of issuance of all policies of insurance required by the Contract to be procured by the selected contractor. If at any time, any of said policies shall be or become unsatisfactory to the City, the selected contractor shall promptly obtain a new policy and submit proof of insurance of the same to the City for approval. Upon failure of the selected contractor to furnish, deliver and maintain such insurance as above provided, the Contract with the City may, at the election of the City, be forthwith declared suspended, discontinued or terminated. Failure of the selected contractor to procure and maintain any required insurance shall not relieve the selected contractor from any liability under the Contract, nor shall the insurance requirements be constructed to conflict with the obligations of the selected contractor concerning indemnification.
- 4.4 **DAMAGES:** All damages, direct or indirect, or whatever nature resulting from the performance of the work or resulting from the work during its progress from whatever cause, shall be borne and sustained by the Contractor.
- 4.5 **INDEMNIFICATION:** The successful Agency selected will be required to defend, indemnify, and save harmless the City, its employees and

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RESIDENTIAL COLLECTION AND DISPOSAL OF WASTE REFUSE AND RECYCLABLE MATERIALS  
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agents, from and against all claims, damages, losses and expenses including without limitations, reasonable attorney's fees arising out of, or in consequence of, any negligent or intentional act or omission of the selected proposer, its employees or agents, to the extent of its or their responsibility for such claims, damages, losses, and expenses.

## **SECTION 5: QUALIFICATIONS OF CONTRACTOR**

5.1 Each Proposal shall contain a statement of qualifications as set forth below. It is requested that this information be submitted in the order listed to facilitate the City's review.

- (a) A brief history and description of the business submitting the Proposal.
- (b) Identification of the business' key professional staff members who will be assigned to this engagement if the Contractor's Proposal is selected. Include a resume for each such key professional staff member that details qualifications, years and types of experience, education, accomplishments, etc. Specify the extent of the availability and commitment of each such professional staff member who will be assigned to this engagement if the Contractor's Proposal is selected.
- (c) A signed cover letter from a person within the Contractor's Company who is authorized to make representations on behalf of the Contractor and to bind the Contractor.
- (d) A summary of the experience in providing similar residential collection and disposal services to local municipalities in New York State. Submit at least five (5) references of current New York State clients, including contact names, title, mailing addresses, telephone numbers and e-mail addresses.
- (e) A detail list of any exceptions to the Scope of Services outlined in this RFP that the Contractor cannot perform. It is expected this Scope of Services will be included in the Contract between the City and the successful Contractor. The Contractor is free to submit alternative suggestions for performing any of the services included in this RFP together with a cost/benefit analysis of why this suggestion should be considered by the City.
- (f) Any additional information which would serve to distinguish the Contractor from other contractors submitting Quotations.



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RESIDENTIAL COLLECTION AND DISPOSAL OF WASTE REFUSE AND RECYCLABLE MATERIALS  
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- 5.2 The City of Newburgh may make such inquiries it deems necessary to determine the ability of each quoting Contractor to perform the services contemplated by this RFP. Contractors shall promptly furnish all information and data for this purpose as such may be subsequently requested by the City of Newburgh.

**SECTION 6: SUBMISSION OF PROPOSAL:**

- 6.1 Qualified Contractors shall submit one (1) original and five (5) copies of their Proposal to the City Comptroller by hand, mail or other courier type services no later than 3:00 p.m., local time, Monday, June 27, 2011 in a sealed envelope with the Contractor's name and address on the outer envelope along with the words **"RFP for Residential Collection and Disposal of Waste Refuse and Recyclable Materials"** clearly marked. Only those proposals received before the aforementioned deadline will be considered. Facsimile or electronic mail proposals will not be accepted. Proposals shall be submitted to the attention of:

Cheryl A. Gross, City Comptroller  
City of Newburgh – City Hall  
83 Broadway – 4<sup>th</sup> Floor  
Newburgh, New York 12550

- 6.2 Each Proposal submitted shall be the document upon which the City of Newburgh will make its judgment regarding each Contractor's qualifications, methodology and ability to provide the requested services.
- 6.3 Those submitting Proposals do so entirely at their own expense. There is no express or implied obligation by the City to reimburse any business or individual for any costs incurred in preparing or submitting Proposals, preparing or submitting additional information requested by the City, or participating in any selection interviews.
- 6.4 Submission of any Proposals indicates an acceptance of the conditions contained in this Request for Proposals unless the submitted Proposal clearly and specifically states otherwise.
- 6.5 The City of Newburgh reserves the right to accept or reject any and all Proposals in whole or in part, to waive any and all informalities, and to disregard all non-conforming, non-responsive or conditional Proposals.
- 6.6 The City of Newburgh reserves the right to award sanitation collection and disposal services, in whole or in part, to one or more businesses and/or individuals.

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- 6.7 Any award to a Contractor shall be conditioned on the later execution of a formal written contract. The City of Newburgh reserves the right to revoke or rescind any award at any time prior to the full execution of a formal written contract.
- 6.8 Any and all awards made for residential collection and disposal services are subject to approval by the City Council.
- 6.9 Submitted proposals may be modified or withdrawn by an appropriate document duly executed (in the same manner that a Proposal must be executed) and delivered to the place where Proposals are to be submitted **at any time prior** to the opening of Proposals.

**SECTION 7: Submission Requirements:**

Each proposal submitted shall become the property of the City and shall contain the following information:

- 7.1 The contractor responses to each of the items listed in Section 5 above.
- 7.2 A positive statement from the contractor they can provide all the services as listed in Section 2 above. Any exceptions or recommended deviations there from should be clearly indicated.
- 7.3 A positive statement from the contractor stating they can comply with the insurance and security requirements set forth in Section 4 above. Any exceptions or recommended deviations there from should be clearly indicated.
- 7.4 A detail description of any and all fees the Contractor expects to bill the City and the basis for determining such amounts. The Proposal must provide a guarantee that no additional fees will be charged the City without prior written approval of the City. If the fees will be based on daily tonnage, the Contractor will be required to submit to the City daily tonnage reports individually for both refuse and recyclable materials disposed of. The bid fees shall not include any excise or sales taxes from which the City is exempt.
- 7.5 The information requested in Sections 2.4 and 2.5 above.
- 7.6 Complete and signed by an officer of the Contractor's firm a "Non-Collusive Proposal Certificate" a "Non-Collusion Affidavit" and an "Acknowledgment by Proposer" attached to this RFP. These three completed documents must be included in the sealed original Proposal with copies in the copies.

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- 7.7        Proposals submitted may include alternative matters or items not specified or requested in this RFP. However, all such alternative matters or items must be listed separately from that requested in this RFP and any related cost(s) thereof must be separate and itemized.

**SECTION 8: PROPOSAL EVALUATION**

- 8.1        Proposals shall remain valid until the execution of a contract by the City, or **September 31, 2011**, whichever comes first.
- 8.2        Proposals shall be evaluated based on the contractors response to each of the items listed in Section 7 above.
- 8.3        Proposals shall be examined and evaluated by the City's Corporation Counsel Office to determine whether each Proposal is considered responsive to the requirements of this RFP.
- 8.4        The selection of a Contractor shall not be based solely on a monetary evaluation. Considerable weight shall be given to experience in the service areas required and the references obtained of the Contractor's services in other communities.
- 8.5        The contract will be awarded to the lowest responsible bidder taking into consideration all information submitted with the proposer's response to the RFP, or any separate part thereof if separable, the acceptance of which will best serve the interest of the City or to reject any and all proposals at no cost to the City and to re-advertise for new proposals. The City specifically reserves the right to waive any informality in the proposals received.

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**Map Showing the Current Garbage Collections Schedule.**

DRAFT

REQUEST FOR PROPOSALS  
RESIDENTIAL COLLECTION AND DISPOSAL OF WASTE REFUSE AND RECYCLABLE MATERIALS  
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**Map Showing the Current Recycling Collection Schedule.**

DRAFT

REQUEST FOR PROPOSALS  
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CITY OF NEWBURGH, NEW YORK

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**NON-COLLUSIVE PROPOSAL CERTIFICATE**

**PURSUANT TO NEW YORK STATE GENERAL MUNICIPAL LAW SECTION 103-D**

By submission of this Proposal, each proposer and each person signing on behalf of any proposer certifies, and in the case of a joint Proposal each party thereto, certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

- (1) The prices in the Proposal have been arrived at independently, without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any competitor;
- (2) Unless otherwise required by law, the prices which have been quoted in this Proposal have not been knowingly disclosed by the proposer and will not knowingly be disclosed by the proposer prior to the opening, directly or indirectly, to any other proposer or to any competitor; and
- (3) No attempt has been made or will be made by the proposer to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Name and Title)

\_\_\_\_\_  
(Name of Firm)

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**NON-COLLUSION AFFIDAVIT**

STATE OF \_\_\_\_\_ )  
 )SS  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_ of the  
(City, Town, Village) of \_\_\_\_\_ in  
the County of \_\_\_\_\_ in the State of  
\_\_\_\_\_, of full age, being duly sworn according to law on my  
oath dispose and say that:

I am \_\_\_\_\_ an officer of  
the firm of \_\_\_\_\_ the vendor  
making the Proposal for the above named work, and that I executed the said Proposal  
with full authority to do so; that said bidder has not, directly or indirectly, entered into  
any agreement, participated in any collusion, or otherwise in connection with the above  
named work; and that all statements contained in said Proposal and in this affidavit are  
true and correct, and made with the full knowledge that the City of Newburgh as Owner  
relies upon the truth of the statements contained in said Proposal and in the statements  
contained in this affidavit in awarding the contract for said work.

I further warrant that no person or selling agency has been employed or retained to  
solicit or secure such contract upon an agreement or understanding for a commission,  
percentage, brokerage or contingent fee, except bona fide employees or bona fide  
established commercial or selling agencies maintained by \_\_\_\_\_

\_\_\_\_\_  
(Name of Agency)

Subscribed and sworn to by: \_\_\_\_\_  
(Also type or print name and title of affiant beneath signature)

Before me this \_\_\_\_\_ day (Affix Notary Stamp Here)  
of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
(Notary Public Signature)

Notary Public of \_\_\_\_\_

My commission expires \_\_\_\_\_ 20\_\_\_\_

**THIS AFFIDAVIT MUST BE COMPLETED BY ALL VENDORS SUBMITTING PROPOSALS**

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**ACKNOWLEDGEMENT BY PROPOSER**

**IF INDIVIDUAL OR INDIVIDUALS:**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS.:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me personally appeared \_\_\_\_\_ to me known and known to me to be the same person(s) described in and who executed the within instrument, and he/she (or they severally) acknowledged to me that he/she (or they) executed the same.

Notary Public, State of \_\_\_\_\_  
Qualified in \_\_\_\_\_  
Commission Expires \_\_\_\_\_

**IF CORPORATION:**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS.:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me personally appeared \_\_\_\_\_ to me known, who, being by me sworn, did say that he/she resides at (give address) \_\_\_\_\_ that he/she is the (give title) \_\_\_\_\_ of the (name of corporation) \_\_\_\_\_, the corporation described in and which executed the above instrument; that he/she knows the seal of the corporation, and that the seal affixed to the instrument is such corporate seal; that it was so affixed by order of the board of directors of the corporation, and that he/she signed his/her name thereto by like order.

Notary Public, State of \_\_\_\_\_  
Qualified in \_\_\_\_\_  
Commission Expires \_\_\_\_\_

**IF PARTNERSHIP:**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS.:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me personally appeared \_\_\_\_\_ to me known, to be the individual who executed the foregoing, and who, being duly sworn, did depose and say that he/she is a partner of the firm of \_\_\_\_\_ and that he/she has the authority to sign the same, and acknowledged that he/she executed the same as the act and deed of said partnership.

Notary Public, State of \_\_\_\_\_  
Qualified in \_\_\_\_\_  
Commission Expires \_\_\_\_\_



RESOLUTION NO.: 121 - 2011

OF

JUNE 20, 2011

A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO NEGOTIATE AND ENTER INTO AN AGREEMENT WITH  
TBE-MONTGOMERY LLC FOR SOLID WASTE PROCESSING AND DISPOSAL

WHEREAS, the City of Newburgh seeks to better manage the disposal of its solid waste;  
and

WHEREAS, TBE-Montgomery LLC has developed a process for sorting, separating and  
collection solid waste and using such waste to generate renewable electrical energy; and

WHEREAS, TBE-Montgomery LLC has presented a proposal to collect and dispose of  
the City's solid waste to use in its renewable electrical energy process; and

WHEREAS, TBE-Montgomery LLC has presented a proposal to collect the City's solid  
waste at a substantially lower cost than the City currently pays for disposal of solid waste at the  
Orange County Transfer Station; and

WHEREAS, this Council has reviewed such agreement and finds that the execution of  
such agreement is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Newburgh,  
New York that the City Manager be and he is hereby authorized to enter into an agreement with  
TBE-Montgomery LLC, in substantially the same form as annexed hereto and subject to such  
other terms and conditions as may be required by the Corporation Counsel, for the disposal of  
solid waste.

## **SOLID WASTE PROCESSING AND DISPOSAL AGREEMENT**

THIS SOLID WASTE PROCESSING AND DISPOSAL AGREEMENT is made and dated as of \_\_\_\_\_, 2011, between the [\_\_\_\_], NEW YORK, (address), a municipality and political subdivision of the State of New York, (referred to herein as the "MUNICIPALITY"), and TBE-MONTGOMERY LLC, 340 Neelytown Road, Montgomery, NY 12549, (referred to herein as the "CONTRACTOR").

### **RECITALS**

1. The Contractor intends to construct, own and operate a [solid waste receiving and recycling, biomass fuel preparation and waste power production facility] located in Montgomery, Orange County, New York (the "Facility"). The Municipality and private collectors doing business in the Municipality will collect or cause to be collected acceptable Municipal Solid Waste ("Acceptable Waste"), and will deliver or cause to be delivered such Acceptable Waste directly to the Facility Site, where the Contractor will sort and separate such Acceptable Waste and gasify biomass to generate renewable electric energy.
2. To assist the Municipality to meet the State policy and goals for reduction of disposal into landfills and to reduce the costs of modifying and operating landfills, and pursuant to N.Y. Gen. Mun. Law Article 6 - § 120-W(2), the Municipality has agreed to deliver and Contractor has agreed to receive and utilize Acceptable Waste for sorting and separating and the production of electric energy from the Facility.

### **I. DEFINITIONS AND INTERPRETATIONS.**

"Acceptable Waste" shall have the meaning set forth in the Recitals.

"Calendar Week" means a period of seven (7) consecutive days beginning on Sunday.

"Calendar Year" means a period of three hundred sixty-five consecutive days beginning on January 1.

"Commencement Date" shall mean the date that the Facility achieves commercial operation.

"Contract Year" means the twelve month period commencing on the Commencement Date and each twelve month period thereafter.

"Contractor" has the meaning set forth in the Recitals, and its permitted successors and assigns.

"Credit Institution" means a bank or other financial institution, or a group of "banks or financial institutions, acting through an agent, severally, or otherwise, providing debt and/or equity financing, including tax equity financing, or credit support for debt financing, for the Facility.

"Designee" or "Designees" shall mean a Person or Persons authorized by the Municipality at any time to collect solid waste generated within the Municipality.

"Escalation Rate" shall mean an annual rate of two and 25/100 percent (2.25%).

"Environmentally Acceptable" means meeting all applicable federal government, State of New York, and Municipality laws, ordinances and regulations relating to disposal of solid waste "Facility Site" means the site on which the Facility is located and the location of the intended delivery of Acceptable Waste by the Municipality to the Contractor.

"Expected Revenues" has the meaning set forth in Section 8.01(b)(ii).

"Facility" has the meaning set forth in the Recitals.

"Facility Site" means the site on which the Facility is located and the location of the intended delivery of Acceptable Waste by the Municipality to the Contractor, 340 Neelytown Road, Montgomery, New York 12549.

"Fixed Fee" has the meaning set forth in Section 6.01 herein.

"Hazardous Waste" means any material defined as a hazardous substance pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.), or applicable state laws and the rules, regulations, policies and guidelines promulgated thereunder, as each may be amended from time to time, or any waste which, by reason of its composition or characteristics is a toxic substance or hazardous waste as defined in the Resource Conservation and Recovery Act, (42 U.S.C. § 6901 et seq.), as amended, and related federal, state and county laws and regulations, or in any future additional or substitute federal, state or county laws and regulations pertaining to the identification, treatment, storage or disposal of toxic substances or hazardous wastes; any source, special nuclear or by-product material within the meaning of the Atomic Energy Act of 1954, as amended, and related regulations; low level radioactive waste, or any other regulated material posing a threat to health or safety or causing injury to or adversely affecting the operation of the Facility, including, without limitation, regulated pathological, medical or biological wastes, septic, cesspool or other human wastes, human and animal remains, cleaning fluids, crankcase oils, cutting oils, paints, acids, caustics, poisons, explosives and drugs. If any governmental agency having appropriate jurisdiction shall determine that substances which are not, as of the date hereof, considered harmful, toxic, or dangerous, are in fact harmful, toxic, or dangerous, or are hazardous or harmful to health, then any such substance shall thereafter constitute Hazardous Waste for purposes of this Agreement. If all government agencies having appropriate jurisdiction shall determine that a given substance which, as of the date hereof, was deemed to be a Hazardous Waste, is no longer harmful, toxic or dangerous, then any such substance shall thereafter no longer constitute Hazardous Waste for purposes of this Agreement.

"Maximum Delivery Amount" shall have the meaning set forth in Section 3.02.

"Municipal Solid Waste" means commercial, residential, industrial and institutional nonhazardous Solid Waste.

"Municipality" has the meaning set forth in the Recitals.

"Person" means any individual, corporation, partnership, trust, government agency or other legal entity.

"Solid Waste" means all putrescible and non-putrescible materials or substances that are discarded as being spent, useless, worthless or in excess to the owners at the time of discard.

"State" means the State of New York.

"Ton" means a "short ton" of 2,000 pounds.

"Unacceptable Waste" means (i) explosives, Hazardous Waste, other hazardous chemicals or materials, radioactive materials, motor vehicles, liquid and semi-liquid wastes, other than such insignificant quantities of the foregoing as are customarily found and are incidentally included in normal household and commercial waste and as are permitted by law to be treated and disposed of in facilities not specifically permitted or licensed to treat or dispose of such materials; (ii) any item either smoldering or on fire; (iii) any items of waste which, at the time of delivery to Facility Site, would normally not be disposed of in a sanitary landfill; and (iv) any items of waste which are prohibited by any judicial decision, order or action of any federal, State or county government or any agency thereof, or any other regulatory authority, or any applicable law or regulation, from being used in the Facility.

"Uncontrollable Circumstances" shall have the meaning assigned in Article V of this Agreement.

## **II. DUTIES OF CONTRACTOR.**

### **2.01 ACCEPTANCE OF ACCEPTABLE WASTE.**

(a) After the Commencement Date, the Contractor shall accept and process all Acceptable Waste delivered to the Facility Site by the Municipality or its Designees regardless of the mechanical status of the Facility, unless the Facility is unable to operate due to factors constituting Uncontrollable Circumstances; provided, however, that in any particular Contract Year the Contractor shall not be required to accept more than the Maximum Delivery Amount.

(b) The Contractor shall identify and shall have the right to reject or separate and dispose of Unacceptable Waste delivered by the Municipality or its Designees to the Facility then serving the Municipality and shall do so in an Environmentally Acceptable manner subject to reimbursement by the Municipality for any costs and expenses of rejection, separation or disposal.

(c) Upon acceptance of the Acceptable Waste, such Acceptable Waste shall become the property of the Contractor and may be used by the Contractor in any lawful manner.

**2.02 RIGHT OF CONTRACTOR TO REJECT CERTAIN WASTE; HANDLING OF UNACCEPTABLE WASTE.** The Contractor shall have the right to reject,

and shall have no obligation to dispose of, any of the following waste brought by any Person to the Facility Site and shall have the right to prevent the unloading of any vehicle bringing such waste if such waste is properly rejected:

(a) Unacceptable Waste (it being agreed that in the event the Contractor determines that a load contains both Acceptable Waste and Unacceptable Waste, it shall be entitled to reject and prevent the unloading of the entire load);

(b) Acceptable Waste brought to the Facility Site at times other than the hours designated for delivery by the Contractor;

(c) Acceptable Waste brought to the Facility Site in excess of the Maximum Delivery Amount, if the Facility is unable for any reason to receive and process such amounts; and

(d) Solid Waste brought to the Facility Site by a Person who is not the Municipality or its Designee.

**2.03 RIGHT OF CONTRACTOR TO ACCEPT SOLID WASTE FROM OTHER PERSONS.** The Contractor may accept, either under contract or on a spot market basis, Acceptable Waste from any other Person.

#### **2.04 REGULATORY REQUIREMENTS.**

(a) **Permits and Licenses.** The Contractor shall be responsible, at its own expense, for obtaining and maintaining compliance under, and obtaining any necessary extensions of, all permits, licenses, zoning ordinances, and other federal, state, county and local approvals, including those related to air and water pollution, solid waste, siting, land use, wetlands, flood plain, noise, odor, and building, which may be necessary for the construction, operation, maintenance and repair of the Facility. If an administrative agency, department, authority, political subdivision or other instrumentality to which an application for a permit required for the operation, maintenance or repair of the Facility fails to take action, whether or not a specific time limitation for such action is prescribed by law, the failure to act shall, so long as the application therefore has been timely filed and is being diligently pursued, be treated as an Uncontrollable Circumstance if the failure to act has a material adverse effect on the ability of the Contractor or the Municipality to satisfy their obligations under this Agreement. Any applicable time limitation shall be deemed to have commenced on the date when the appropriate application and all related information called for by the application and/or permitting agency have been filed and any other prerequisites established by the applicable statutes and regulations have been met.

(b) **Adherence to Law.** The Contractor shall (i) design, construct and operate the Facility and (ii) utilize the Acceptable Waste in a manner which complies in all material respects with any applicable law, ordinance, rule, regulation, order, permit, or license of any federal, state or county agency, court or other governmental body, notwithstanding any change in law, and shall be responsible for any fines or penalties resulting from any failure to do so.

**2.05 SAFETY PRECAUTIONS.** In compliance with applicable federal, state, county, and local regulations, the Contractor shall initiate, maintain and supervise safety precautions and programs in connection with the operation and maintenance of the Facility.

**2.06 TRANSPORTATION.** The Municipality shall arrange and pay for transportation of all Acceptable Waste accepted by the Contractor at the Facility Site.

**2.07 UNPLANNED OUTAGES.** In the event of any unplanned outage of the Facility, Contractor shall: (i) use all commercially reasonable efforts to resume normal operations of the Facility as quickly as possible and, (ii) arrange for interim processing or disposal of all Acceptable Waste in an Environmentally Acceptable manner.

**2.08 RECORDS.**

(a) The Contractor or its designee shall operate and maintain a motor truck scale at the Facility Site, calibrated to the accuracy required by Orange County for public weighing facilities, to weigh all vehicles delivering Acceptable Waste to the Facility. The Municipality shall cause its vehicles, and those of any Designees, to have identification permanently indicated and conspicuously displayed thereon. Each vehicle will be weighed before entering and prior to departing such Facility Site, with the date, time, truck identification and weights (loaded and unloaded) to be entered on a weight record. The scale records will be used as a basis for calculating fees, charges and credits under this Agreement. If the weighing facility at the Facility Site is out of service, the Contractor shall, subject to any applicable state regulation, either obtain alternate temporary weighing capability or estimate the quantity of Acceptable Waste delivered on the basis of truck volumes and data based on pertinent historical information.

(b) The Contractor or its designee shall maintain daily records of the total Acceptable Waste tonnage delivered by the Municipality and its Designees. Such daily records shall include detailed and summary listings of tonnage delivered by the Municipality and its Designees to the Facility Site, the estimated amount of such waste rejected as being other than Acceptable Waste, and such other records as are necessary to implement the provisions of this Agreement. Summary information for each month shall be provided to the Municipality within ten (10) business days after the end of such month. Copies of all daily records and weight tickets shall be maintained by the Contractor for a period of at least three (3) years, or for such longer period required by law, and shall be made available for inspection by the Municipality during normal business hours upon reasonable notice. In the event the Municipality is required by applicable law or regulation to file reports pertaining to the operation of the Facility, the Contractor shall provide the Municipality with the information required to compile such reports.

**2.09 INDEMNIFICATION.** The Contractor will protect, indemnify and hold the Municipality harmless from and against all liabilities, actions, damages, claims, demands, judgments, losses, defense costs, expenses or suits against the Municipality by third parties including reasonable attorneys' fees, and will, if requested, defend the Municipality in any suit, including appeals, for personal and bodily injury to, or death of, any person or persons, loss or damage to property (including environmental damage), or civil or criminal fines or penalties, to the extent caused by the willful misconduct or negligent acts, errors or omissions of the

Contractor, its agents or employees acting within the scope of their employment. The Municipality shall promptly notify the Contractor of the assertion of any claim against which it asserts a right to be indemnified hereunder; shall, at its option, give the Contractor the opportunity to defend such claim; and shall not settle such claim without the approval of the Contractor, which approval shall not be unreasonably withheld. These indemnification provisions are for the protection of the Municipality only, do not apply to claims of the Municipality itself against the Contractor under this Agreement or any related agreement, and shall not create any benefit or liability to third parties.

### **III. DUTIES OF THE MUNICIPALITY.**

#### **3.01 DELIVERY OF ACCEPTABLE WASTE.**

(a) Commencing on the Commencement Date and continuing throughout the term of this Agreement, the Municipality shall, at a rate of at least two deliveries per Calendar Week, deliver or cause to be delivered to the Contractor at the Facility Site all Acceptable Waste collected for disposal by the Municipality and its Designees during each Contract Year subject to the Contractor's right to reject the Municipality's deliveries in excess of the Maximum Delivery Amount.

(b) The parties intend that all Acceptable Waste collected for disposal by the Municipality be delivered to the Contractor at the Facility Site, and, accordingly, unless the Contractor otherwise elects, the Municipality shall not deliver or provide any such Acceptable Waste to any other disposal sites or Persons.

(c) In the event the Contractor determines there is a need for Acceptable Waste during start-up and testing operations prior to the Commencement Date, the Municipality has the obligation to deliver to the Facility Site all Acceptable Waste collected by the Municipality or its Designee at times requested by the Contractor. The Contractor shall give the Municipality at least sixty (60) days prior written notice of the commencement of start-up and testing operations at the Facility and its request for the receipt of Acceptable Waste quantities from the Municipality required for such limited operations. During start-up and testing operations, the Contractor shall give the Municipality at least five (5) days prior written notice of any change in such quantities..

(d) The Parties shall carry out the obligations under this Section in accordance with the provisions of Schedule 2.

**3.02 MAXIMUM DELIVERY AMOUNT.** For purposes of Sections 2.01(a) and 3.01(a), the Maximum Delivery Amount for any Contract Year shall be one hundred twenty percent (120%) of the total number of Tons of Acceptable Waste delivered to the Facility Site during the first Contract Year following the Commencement Date.

**3.03 PAYMENT OF FEES.** The Municipality shall pay the Contractor all Fees as set forth in Article VI.

**3.04 INDEMNIFICATION.** The Municipality will, to the extent permitted by applicable law, protect, indemnify and hold the Contractor harmless from and against all

liabilities, actions, damages, claims, demands, judgments, losses, defense costs, expenses or suits of third parties against the Contractor including reasonable attorneys' fees, and will defend the Contractor, at the Contractor's option, in any suit, including appeals, for personal and bodily injury to, or death of, any person or persons, loss or damage to property, or civil or criminal fines or penalties, to the extent caused by the willful misconduct or negligent acts, errors or omissions of the Municipality, its agents or employees acting within the scope of their employment or caused by or resulting from the handling or disposal of Unacceptable Waste by the Contractor in the performance of its duties hereunder (except as otherwise provided in Section 2.03(b)(iii)) (herein, the "Losses"). The Contractor shall promptly notify the Municipality of the assertion of any claim against which it asserts a right to be indemnified hereunder; shall give the Municipality the opportunity to defend such claim; and shall not settle such claim without the approval of the Municipality, which approval shall not be unreasonably withheld. The above provisions are for the protection of the Contractor only, do not apply to claims of the Contractor against the Municipality under this Agreement or any related agreements, and shall not create any benefit or liability to third parties.

#### **IV. CONDITIONS PRECEDENT TO DUTIES OF CONTRACTOR AND DUTIES OF THE MUNICIPALITY.**

4.01 The obligations of the Municipality to commence delivery, and of the Contractor to commence receipt, of Acceptable Waste are conditional upon the occurrence of all of the following:

(a) The Contractor shall have received a written commitment from a Credit Institution for a loan, bond or equity securities underwriting or other similar type of non-recourse financing (or credit support for such financing), repayable during the term of this Agreement and on such terms and conditions as are satisfactory to the Contractor in its sole discretion; and

(b) The Contractor shall have advised the Municipality in writing that the Facility Site is ready to receive the Municipality's Acceptable Waste.

4.02 Section 9.02 shall apply if the above conditions precedent are not met or waived.

#### **V. UNCONTROLLABLE CIRCUMSTANCES.**

5.01 Any act, event or condition, shall be deemed an Uncontrollable Circumstance to the extent that it materially and adversely affects the ability of any party to perform its obligations hereunder, if such act, event, or condition is beyond the reasonable control of and is not also the result of the willful or negligent action or inaction, principally of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Agreement. The good faith contesting of, or the failure to contest, action or inaction of a third party, shall not be construed as willful or negligent action or lack of reasonable diligence by the party claiming that such third party action or inaction constitutes Uncontrollable Circumstances. Acts or events constituting Uncontrollable Circumstances include, but shall not be limited to, the following:



(a) An act of God, such as hurricane, landslide, lightning, earthquake or flood; fire, explosion, or similar occurrence; acts of a public enemy, extortion, sabotage or civil disturbance;

(b) The failure of any federal, state, county or city public agency or private utility having jurisdiction in the area in which the Facility Site is located to provide and maintain utilities, services, water and sewer lines and power transmission lines to the Facility Site, which are required for the construction, start-up, testing, operation or maintenance of such facilities;

(c) The failure of any subcontractor or supplier to furnish labor, services, materials or equipment on the dates agreed to if such failure is caused by an Uncontrollable Circumstance and the affected party is not reasonably able to obtain substitute labor, services, materials or equipment on terms and conditions no less favorable to the affected party;

(d) Governmental pre-emption of materials or services in connection with a public emergency, any act or omission of the Municipality in their governmental capacity or any condemnation or other taking by eminent domain of any portion of the Facility Site; or

(e) Any change in law which is (i) legally binding with respect to the design, construction, testing, utilization, operation or maintenance of the Facility Site, (ii) occurs subsequent to the date hereof, and (iii) has the effect of temporarily or permanently preventing a party from performing any of its obligations hereunder including the following: any change in, or adoption of, any constitution, charter, act, statute, law, ordinance, code, rule, regulation or order; or any change in the standards or criteria contained in a permit, which standards or criteria must be met in order for the Facility Site to be operated lawfully at the levels specified in this Agreement; any denial of an application for, delay in the review, issuance or renewal of or suspension, termination, interruption, imposition of a new condition in connection with the renewal of or failure of renewal, on or after the date hereof of any governmental permit, license, consent, authorization or approval, or any other legislative or administrative action or refusal to act of the United States of America or the State of New York or any agency, department, authority, political subdivision or other instrumentality thereof (except that no action of the Municipality or any instrumentality thereof shall excuse the performance of the Municipality under this Agreement); or any decree, judgment or order of a court. Any change of law which requires the Facility to install or upgrade equipment shall qualify hereunder as a change of law, and the time required to install or upgrade equipment, if it requires a shutdown or slowdown of the operation of the Facility, shall qualify as an Uncontrollable Circumstance.

5.02 Any party shall be excused from performance hereunder when its nonperformance was caused directly or indirectly by Uncontrollable Circumstances. The party whose performance is affected shall give to the other parties prompt written notice of the Uncontrollable Circumstances, and thereupon the obligations of the party giving the notice, so far as such obligations are affected by the Uncontrollable Circumstances, shall be suspended during such Uncontrollable Circumstances and for a reasonable time thereafter as required to remedy any physical damage or otherwise overcome the effect of such Uncontrollable Circumstances.

5.03 Any party excused from performing any obligation pursuant to Section 5.02 above shall promptly, diligently and in good faith take all reasonable action required for it to be able to commence or resume performance of its obligations hereunder.

## **VI. FEES.**

6.01 **FIXED FEE.** The Municipality shall pay the Contractor a fixed fee of sixty-six dollars and no cents (\$66.00) per Ton of Acceptable Waste delivered by the Municipality or its Designees to the Facility Site and accepted by the Contractor (as provided in Article II) ("Fixed Fee").

6.02 **ESCALATION.** The Fixed Fee shall escalate annually, commencing January 1, 2014], at the Escalation Rate.

6.03 **INCREASE IN DEDUCTIONS AND FEES DUE TO INCREASED ENVIRONMENTAL LAW COMPLIANCE.** In the event that, from time to time after the Commencement Date, because of a change in applicable environmental laws, regulations or ordinances (a) the operating costs of the Facility escalate, then the Contractor shall be entitled to recoup from the Municipality the increased operating costs.

### **6.04 METHOD OF PAYMENT.**

(a) In accordance with Article VI, not earlier than the tenth day of each month after the Commencement Date, the Contractor shall invoice the Municipality for services rendered by the Contractor under this Agreement during the preceding month. The total amount of the invoice shall be the sum of the following: the number of Tons of Acceptable Waste delivered by the Municipality and its Designees and accepted by the Contractor during such month, multiplied by the then applicable fee per Ton including the applicable Escalation Rate.

(b) All invoices shall be delivered by hand, by commercial delivery service (such as Federal Express) or mailed first class, postage prepaid to the Municipality at the address set forth in Article XIII, and such invoices shall be paid within fifteen (15) days after the date of the invoice.

(c) The Municipality may supply other addresses at its discretion at any time.

6.05 **ALTERNATE DISPOSAL COSTS.** Subject to Article V, in the event that, for any reason, the Contractor is unable to perform services in the manner contemplated by this Agreement, and the Contractor is forced to use alternate disposal methods for Acceptable Waste delivered and paid for by the Municipality, any resulting increase in the Contractor's costs shall be borne by the Contractor.

## **VII. INSURANCE, LETTER OF CREDIT BOND REQUIREMENTS.**

7.01 **INSURANCE.** The Contractor shall obtain at its own cost and expense the types of insurance listed herein.

Without limiting the Contractor's indemnification requirements, it is agreed that the Contractor accepts the following conditions and shall maintain in force at all times during the performance of this agreement the following policy or policies of insurance covering its operations, and require subcontractors to procure and maintain these same policies:

(a) COMPREHENSIVE GENERAL LIABILITY OR COMMERCIAL GENERAL LIABILITY, via the Occurrence Form, with minimum Combined Single Limits of [\$5,000,000 per Occurrence], and [\$5,000,000 Aggregate including]:

- (i) Premises - Operations Coverage
- (ii) Completed Operations
- (iii) Contractual Liability
- (iv) Broad Form Property Damage
- (v) Independent Contractors'
- (vi) Protective Liability

Coverage may be written in layers, as long as each layer is on a "Following Form" basis, provided that the aggregate policy limits are not reduced. The policy must specifically state, by endorsement or otherwise, that this insurance applies to bodily injury, property damage, or personal injury arising out of premises and/or operations necessary or incidental to the project described herein, or any expansion thereof.

(b) AUTOMOBILE LIABILITY, with minimum limits of [\$1,000,000] for any one accident, including all Owned, Non-Owned and Hired Motor Vehicles. The Municipality shall be named as additional insured on such policy.

(c) WORKERS' COMPENSATION: Statutory Limits.

(d) EMPLOYERS' LIABILITY: [\$500,000] each accident or disease.

(e) The Contractor may incur such deductibles as are standard in the industry.

The parties acknowledge that during the term of this Agreement certain Forms and types of coverage described in this Section 7.01 may change or may cease to be available on a commercially reasonable basis. In such event, the Contractor shall use reasonable efforts to obtain the closest equivalent Form or type of coverage then available.

**7.02 ACCEPTABILITY OF INSURERS.** Insurance shall be placed with insurance companies with an A.M. Best rating of no less than "A," unless proper financial information relating to the company is submitted to and approved by the Municipality prior to coverage being placed with such insurance company.

**7.03 EVIDENCE OF INSURANCE.** The Contractor shall procure and maintain insurance policies as described herein and shall furnish to the Municipality duplicate copies of all policies, including applicable endorsements. Since policies will expire before the completion of this Agreement, renewal certificates of insurance shall be furnished to the Municipality by the Contractor before the expiration date of each policy, for the term of this Agreement.

**7.04 EFFECT OF APPROVAL OF INSURANCE.** Approval of the insurance by the Municipality shall not in any way relieve or decrease the liability of the Contractor hereunder. It is expressly understood that the Municipality does not in any way represent that the specified limits of liability or coverage or policy forms are adequate to protect the interest or satisfy all liabilities of the Contractor.

## **VIII. DEFAULT, DISPUTE RESOLUTION AND TERMINATION.**

### **8.01 REMEDIES FOR DEFAULT.**

#### **(a) Default by Contractor.**

(i) Upon the occurrence of an Event of Default by the Contractor under this Agreement, and subject to the further provisions of this Article VIII, the Municipality shall include compensatory damages, specific performance, and termination.

(ii) Termination by the Municipality shall be limited as set forth in Section 8.02 hereof.

(iii) Termination by the Municipality shall be subject to any applicable extension or Cure Period and to the rights of the Credit Institution under Section 8.09 hereof.

#### **(b) Default by Municipality.**

(i) Upon the occurrence of an Event of Default by the Municipality under this Agreement, the remedies of the Contractor shall include compensatory damages, specific performance and termination of this Agreement.

(ii) In the event this Agreement is terminated pursuant to Section 8.03(a)(v), the Contractor shall be entitled to receive from the Municipality liquidated damages in an amount equal to thirty percent (30%) of the Contractor's Expected Revenues, to be calculated as described below.

(A) If such termination occurs prior to the Commencement Date, the Contractor's Expected Revenues shall be calculated by (I) multiplying the Fees by the amount of Solid Waste delivered or provided by the Municipality to Orange County for waste collection/disposal during the 12-month period immediately preceding termination of the Agreement, and then (II) multiplying the amount determined in (I) by 20.

(B) If such termination occurs after the Commencement Date, but before the end of the first full Contract Year, the Contractor's Expected Revenues shall be calculated by (I) multiplying the Fees by the amount of Solid Waste delivered or provided by the Municipality to Orange County for waste collection/disposal during the 12-month period immediately preceding termination of the Agreement, and then (II) multiplying the amount determined in (I) by the number of Contract Years remaining in the Agreement.

(C) If such termination occurs after the Commencement Date and after the end of the first full Contract Year, the Contractor's Expected Revenues shall be calculated by multiplying the total Fees paid by the Municipality to the Contractor during the Contract Year preceding the termination of the Agreement by the number of Contract Years remaining in the Agreement.

(iii) Termination by the Contractor shall be limited as set forth in Section 8.03 hereof.

(iv) Termination by the Contractor shall be subject to any applicable extension or Cure Period.

## **8.02 EVENTS OF DEFAULT BY THE CONTRACTOR.**

(a) Each of the following shall constitute an Event of Default on the part of the Contractor, for which the Municipality may seek compensatory damages, specific performance, or termination of this Agreement, using the procedures set out herein.

(i) Contractor failure (which is not excused by Uncontrollable Circumstances), occurring at any time after the Commencement Date, to receive Acceptable Waste delivered by the Municipality or its Designee (up to the limits set forth in Section 2.02), for a continuous period of thirty (30) days.

(ii) Should the Contractor, its agents or employees acting in the scope of their employment be proven to have violated any law or regulation and such violation results in substantial liability to the Municipality which is not reimbursed by the Contractor within 30 days of the liability being payable.

(iii) Contractor failure to obtain and maintain the insurance required by Article VII.

(iv) A failure to pay or credit any amount of monies due by the Contractor to the Municipality under this Agreement when such amount becomes due and payable, and when such amount remains unpaid for thirty (30) days after written notice to the Contractor that such payment is past due; provided, however, that if the payment or credit is disputed, such thirty (30) day period shall begin at such time as a written finding of the amount due is issued by an arbitrator under the procedures set forth in Section 8.05.

(v) A failure by the Contractor to initiate receipt of Acceptable Waste from the Municipality within 180 days after the Commencement Date.

(vi) The failure or refusal by the Contractor substantially to fulfill any of its material obligations (other than the material obligations set forth in Section 8.02(a)) in accordance with this Agreement, unless such failure or refusal shall be excused or justified as provided under Article V hereof.

(vii) If, at any time, any material written representation or warranty made by the Contractor herein shall be determined to have been untrue or incorrect when made and such condition is shown to have a continuing material adverse impact on the Contractor's ability to perform its obligations under this Agreement.

(b) No failure or refusal under this Section 8.02 shall constitute an Event of Default unless and until:

(i) the Municipality shall have given prior written notice of the alleged Event of Default (describing such default in reasonable detail) to the Contractor and the Credit Institution; and

(ii) the circumstance creating the default (if it is a default involving other than a failure to pay a liquidated and undisputed sum payable to the Municipality) shall not have been corrected nor shall reasonable steps have been initiated to correct the same within a reasonable period of time (which shall, in any event, be not less than sixty (60) days from the date of the notice given pursuant to Subsection 8.02(c)). If reasonable steps shall have been commenced to correct such default within such reasonable period of time, the same shall not constitute an Event of Default for as long as reasonable steps are continuing to correct such default with due diligence. For the purposes of this Section 8.02, "reasonable steps" shall be deemed to include the initiation by the Contractor of actions or planning (followed within a reasonable time with action) to remedy the Event of Default, such as communication with parties capable of aiding the Contractor in remedying the Event of Default, securing assessment of costs to remedy the Event of Default, and discussions with the Municipality, the Credit Institution or other interested parties of the means by which the Event of Default may be cured.

(c) No correction of a default of the Contractor by or on behalf of the Municipality, or reasonable steps taken by the Municipality to correct a default of the Contractor, shall cause the Contractor's default to cease to be an Event of Default; provided, however, that the Contractor and the Credit Institution (pursuant to Section 8.09) shall have the prior right and opportunity to effect any correction or cure of a default or Event of Default.

### **8.03 EVENTS OF DEFAULT BY THE MUNICIPALITY.**

(a) Each of the following shall constitute an Event of Default on the part of the Municipality for which the Contractor may terminate this Agreement using the procedures set out herein, or, in any case, seek compensatory damages or specific performance against the Municipality:

(i) The failure by the Municipality to pay any amount of monies due to the Contractor under this Agreement when such amount becomes due and payable, and such amount remains unpaid for thirty (30) days after written notice to the Municipality that such payment is past due; provided, however, that if the payment demanded is disputed, such thirty (30) day period shall begin at such time as a written finding of the amount due is issued by an arbitrator under the procedures set forth in Section 8.05.

(ii) Should the Municipality, or its employees acting in the scope of their employment, be proven to have violated any law or regulation and such violation results in substantial liability to the Contractor which is not reimbursed by the Municipality within 30 days of the liability being payable.

(iii) The failure of the Municipality to fulfill any material obligation under this Agreement (other than the payment of monies governed by Section 8.03(a)(i)), unless such failure shall be excused or justified as provided in Article V hereof.

(iv) If, at any time, any representation or warranty made by the Municipality herein shall be determined to have been untrue or incorrect when made and such condition is shown to have a continuing material adverse impact on the Municipality's ability to perform its obligations under this Agreement.

(v) The diversion by the Municipality, prior to or in any Contract Year, of delivery of Acceptable Waste to other disposal sites or Persons.

(b) No failure or refusal under this Section 8.03 shall constitute an Event of Default unless and until

(i) The Contractor shall have given prior written notice to the Municipality, describing such default in reasonable detail; and

(ii) The circumstance creating the default (if it is a default involving other than a failure to pay a liquidated and undisputed sum payable to the Contractor) shall not have been corrected nor shall reasonable steps have been initiated to correct the same within a reasonable period of time (which shall, in any event, be not less than sixty (60) days from the date of the notice given pursuant to Subsection 8.03(c)(i)). If the Municipality shall have commenced to take reasonable steps to correct such default within such reasonable period of time, the same shall not constitute an Event of Default as long as the Municipality is continuing to take reasonable steps to correct such default. For the purposes of this Section 8.03, "reasonable steps" shall be deemed to include the initiation by the Municipality of actions or planning (followed within a reasonable time with action) to remedy the Event of Default, such as communication with parties capable of aiding the Municipality in remedying the Event of Default, securing assessment of costs to remedy the Event of Default, and discussions with the Contractor, the Credit Institution or other interested parties of the means by which the Event of Default may be cured.

(c) No correction of a default of the Municipality, by or on behalf of the Contractor, or reasonable steps taken by the Contractor to correct a default of the Municipality,

shall cause the default of the Municipality to cease to be an Event of Default; provided, however, that the Municipality shall have the prior right and opportunity to effect any correction or cure of a default or Event of Default.

(d) Notwithstanding any other provision in this Section 8.03, if the Municipality is in default under Section 8.03(a)(v), the Municipality must cure such Event of Default within 30 days of receiving notice from the Contractor of such Event of Default. If the Municipality does not cure such Event of Default within 30 days of receiving notice, the Contractor may exercise its right to terminate this Agreement by providing notice as set forth in Section 8.04.

**8.04 NOTICE OF TERMINATION FOR DEFAULT.** If any party shall have a right of termination for cause in accordance with this Article VIII by virtue of the fact that an Event of Default exists, after all periods of grace and cure have then expired (including any cure period granted to the Credit Institution) the right of termination may be exercised by written notice of termination given to the party in default. The notice shall specify the termination date, which shall be no less than thirty (30) days from the date of such notice, except in the case of abandonment by the Contractor under Section 8.10 herein.

#### **8.05 DISPUTE RESOLUTION.**

(a) If a dispute arises from or relates to this contract or the breach thereof and if the dispute cannot be settled through discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by the American Arbitration Association ("AAA") under its Commercial Mediation Rules before resorting to arbitration. Thereafter, any unresolved controversy or claim arising from or relating to this contractor breach thereof shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The AAA shall select a mediator or arbitrator, as the case may be, who shall be completely disinterested and possess relevant business experience in solid waste management.

(b) The location of any arbitration or mediation shall be in New York City. The arbitrators shall award to the prevailing party, if any, as determined by the arbitrators, all of its costs and fees. 'Costs and fees' mean all reasonable pre-award expenses of the arbitration, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees. In addition, the arbitrators shall award interest on an award for money payable under this Agreement to the extent this Agreement provides for the payment of such interest.

(c) The Contractor and the Municipality shall, in good faith, take all reasonable measures necessary to facilitate an expeditious resolution of a dispute hereunder. To the extent permitted by Applicable Law, if the arbitrator determines that a party has acted in bad faith in referring any dispute to arbitration, the party acting in bad faith shall pay all of the fees and expenses of the arbitrator and all attorney's fees incurred by the other party in connection with such proceedings.



(d) The Municipality agrees to consolidate any dispute it may have under this Agreement with that of any other similarly situated Municipality and to be bound by any decisions of the arbitrators with respect to such dispute.

(e) Pending final resolution of any dispute (except a dispute regarding the cause for terminating this Agreement), the parties shall continue to fulfill their respective obligations under the Agreement.

(f) Notwithstanding anything to the contrary in this Agreement, neither party shall be required to await the resolution of dispute proceedings regarding the reasons for terminating this Agreement before exercising such party's termination rights. The provisions of paragraph (g) below shall be applicable to any disputes regarding liabilities in connection with such termination.

(g) During any dispute concerning the payment of money or the set-off of amounts due under this Agreement, the amount in controversy shall not be paid or set-off (as the case may be) unless and until the dispute is resolved in favor of the party claiming entitlement to the disputed payment or right of set-off.

**8.06 SURVIVAL OF CERTAIN RIGHTS AND OBLIGATIONS.** The rights and obligations of the parties governing the ability of any party to terminate this Agreement and the manner of determining the rights of the parties with regard thereto shall survive any termination of this Agreement. No termination of this Agreement shall limit or otherwise affect the respective rights and obligations of any party accrued prior to the date of such termination, including any rights as the result of the breach of this Agreement by either party.

**8.07 RIGHT OF TERMINATION NOT EXCLUSIVE.** Any rights of termination upon an Event of Default by the Contractor or the Municipality, are not exclusive and may be exercised without prejudice to any right provided by law to any party to bring appropriate action, subject to the preemptory requirements of Section 8.05, to recover actual damages for failure in the performance by the defaulting party of its obligations pursuant to this Agreement.

**8.08 RIGHT TO CURE BY CREDIT INSTITUTION.**

(a) **Right to Cure.** If the Municipality alleges an Event of Default under this Agreement, then, provided the Contractor has provided the Municipality notice of the name and address of the Credit Institution, the Municipality shall give written notice of the Event of Default to the Credit Institution at the same time that it gives written notice to the Contractor as required under Section 8.02(c)(i). The Credit Institution shall have the same right as the Contractor to arrange for the cure of the Event of Default and shall also have the right (if and when granted to the Credit Institution pursuant to the agreements between it and the Contractor) to substitute for the Contractor a responsible new operator acceptable to the Municipality (referred to herein as "Replacement Contractor"), which right the Credit Institution may invoke upon fourteen (14) days written notice at any time during the period stipulated under Section 8.09(b) to the Municipality and the Contractor. While the Credit Institution shall be entitled to appoint a Replacement Contractor, its right to cure an Event of Default shall apply regardless of whether a Replacement Contractor is appointed. Any Replacement Contractor shall use its best

efforts to effect a Successful Cure as soon as possible, but in no event shall such substitute performance by the Replacement Contractor exceed the cure period set forth in Section 8.09(b)(i).

(b) **Cure Period.** If the Credit Institution invokes its right to cure an Event of Default under Section 8.09(a), there shall be a period within which the Event or Events of Default may be cured (referred to herein as the "Cure Period"), which shall end upon the earliest of:

(i) one (1) year from the date on which the default first occurred or such longer period as is required for the delivery and start up of equipment to cure the default, but in no event longer than two years;

(ii) the date the Credit Institution gives notice to the Municipality that cure is no longer being attempted, or

(iii) the date that all Events of Default have been cured, and, in the event a Replacement Contractor has been appointed, the Replacement Contractor has assumed in writing the obligation to resume full compliance with the terms of this Agreement (herein called a "Successful Cure").

(c) **Operations During Cure Period.** During the Cure Period, neither the Replacement Contractor, if any, nor the Credit Institution shall be liable to the Municipality for damages caused by the Contractor in excess of cash available to Contractor from revenues from the operation of the Facility after payment of obligations to Credit Institutions and operating costs.

(d) **Revenues During Cure Period.** During any Cure Period, the Municipality shall pay to the Credit Institution or Replacement Contractor, if any, as instructed by the Credit Institution, all fees required by Article VI. The operator of the Facility then serving the Municipality (including either the Credit Institution or Replacement Contractor, if any) shall document and provide to the Municipality the information required by this Agreement to be furnished by the Contractor to the Municipality.

(e) **Subsequent to Cure Period.** If a Successful Cure is achieved, upon termination of the Cure Period, the Replacement Contractor, in the event a Replacement Contractor is appointed, shall be subject to all the terms and conditions of this Agreement from the end of the Cure Period to the expiration of the Agreement.

## **IX. TERM.**

9.01 **TERM.** Subject to the further provisions of this Article IX and the provisions of Article VIII, the term of this Agreement shall commence upon signature by the parties and shall remain in effect for a term of twenty (20) Contract Years from the Commencement Date (the "Initial Term"). Following the Initial Term, this Agreement shall be automatically extended for four five-year terms (each such five-year term an "Extension Term"), unless one of the parties gives the other notice of an intent to terminate the Agreement, which notice must be provided no later than one year prior to the expiration of the Initial Term or any Extension Term.

**9.02 TERMINATION FOR FAILURE TO MEET CONDITIONS PRECEDENT.**  
In the event that all conditions precedent stated in Article IV are not satisfied or waived by the December 31, 2014, this Agreement may be terminated by any party hereto upon thirty (30) days' prior written notice by such party to the other party, unless such failure to satisfy all such conditions precedent is caused by an Uncontrollable Circumstance, in which case the date stipulated above shall be extended by that number of days during which an Uncontrollable Circumstance occurred.

**X. REPRESENTATIONS AND WARRANTIES.**

**10.01 REPRESENTATIONS AND WARRANTIES OF THE MUNICIPALITY.**  
As of the date of execution of this Agreement, the Municipality represents and warrants to the Contractor as follows:

(a) The Municipality is a body politic and corporate, constituting a public instrumentality and political subdivision of the State. The Municipality has agreed to implement solid waste disposal, and to provide solid waste management services to the public.

(b) The Municipality has all requisite power, authority and capacity to enter into and deliver this Agreement and related documents, to engage in the transactions contemplated hereby and to perform its obligations hereunder in accordance with the terms hereof.

(c) The execution, delivery and performance of this Agreement by the Municipality has been duly and effectively authorized by all necessary Municipality action, and the officers of the Municipality who are here undersigned have been empowered by all necessary authorizations and resolutions to execute and deliver this Agreement on its behalf.

(d) This Agreement has been duly and validly executed and delivered on behalf of the Municipality, and assuming due authorization, execution and delivery of this Agreement by the Contractor, this Agreement constitutes the valid and legally binding obligation of the Municipality, enforceable against the Municipality in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of the parties hereto generally.

(e) There is no action, proceeding or governmental investigation pending or, to the knowledge of the Municipality, threatened against the Municipality which could materially and adversely affect consummation of any of the transactions contemplated hereunder, or which could materially and adversely affect the performance of any of the obligations of the Municipality under this Agreement.

(f) The execution, delivery and performance of this Agreement by the Municipality is not in conflict with and will not result in a breach of, or constitute a default under any provisions of any indenture, contract, agreement or other instrument to which the Municipality is a party or by which the Municipality is bound. The execution, delivery and performance of this Agreement by the Municipality will not violate any provision of law

applicable to the Municipality or any order, writ, injunction, judgment or decree of any court or governmental authority by which the Municipality is bound.

(g) No further order, consent, approval, authorization of, or declaration or filing with any governmental or public body is required in order for the Municipality to execute and deliver this Agreement. No such further order, consent, approval, authorization, declaration or filing is required in order for the Municipality to perform its obligations under this Agreement.

**10.02 REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR.** As of the date of execution of this Agreement, the Contractor represents and warrants to the Municipality as follows:

(a) The Contractor is a limited liability company partnership duly organized, validly existing and in good standing under and by virtue of the laws of the State of New York, and is duly authorized to do business in and is in good standing in the State of New York. The copies of its organizational documents heretofore furnished to the Municipality are true, correct and complete copies of such documents.

(b) The Contractor has all requisite power, authority and capacity under the laws of the State of New York, and its organizational documents to enter into and deliver this Agreement and all referenced Exhibits, to engage in the transactions contemplated hereby and to perform its obligations hereunder in accordance with the terms hereof.

(c) There is no action, proceeding or governmental investigation pending or, to the knowledge of the Contractor, threatened against the Contractor which could materially and adversely affect the design, construction, start-up, testing, or performance requirements of the Facility or which could materially and adversely affect consummation of any of the transactions contemplated hereby or which could materially and adversely affect the performance of any of the obligations of the Contractor under this Agreement.

(d) The execution, delivery and performance of this Agreement by the Contractor have been duly and effectively authorized by all necessary Contractor action.

(e) This Agreement has been duly and validly executed and delivered on behalf of the Contractor and assuming due authorization, execution and delivery of this Agreement by the Municipality, this Agreement constitutes the valid and legally binding obligation of the Contractor, enforceable against the Contractor in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of the parties hereto generally.

(f) The execution, delivery and performance of this Agreement by the Contractor are not in conflict with, and will not result in any breach of, or cause a default under, any of the terms of the Contractor's organizational documents, or with any provisions of any indenture, contract, agreement or other instrument to which the Contractor is a party or by which the Contractor is bound.

(g) The execution, delivery and performance of this Agreement by the Contractor will not violate any provision of law applicable to the Contractor or any order, writ,

injunction, judgment or decree of any court or governmental authority by which the Contractor is bound.

(h) No further order, consent, approval, authorization of, or declaration or filing with, any governmental or public body, is required in order for the Contractor to execute and deliver this Agreement or perform its obligations hereunder, except for the licenses, permits, and other approvals which the Contractor is required to obtain hereunder relating to the design, construction, start-up, testing and operation of any facility.

## **XI. PARTIES TO AGREEMENT.**

The Municipality and the Contractor are independent parties under this Agreement and no party is the servant, agent or employee of the other, nor are they partners or coventurers and none shall share with the others in any risk or liability which arises out of any act of commission or omission in carrying out the provisions of this Agreement or the transactions arising therefrom; provided, however, that each party shall be entitled to enforce this Agreement against the others and seek remedies available at law or in equity and each shall be responsible for its own negligence in carrying out or for breach of the provisions of this Agreement.

The rights and obligations created under this Agreement shall apply exclusively to the parties hereto and their successors and permitted assigns and no rights shall be created in any other party by reason of this Agreement or any separate act or action taken independently by any party hereto. Nothing contained in this Agreement is intended to nor shall it confer upon any person, firm or corporation not a party hereto or referred to herein or consenting hereto or being bound by any obligation hereunder, any right, or vest any cause of action in, or to authorize any such other person to institute, join or maintain any suit or suits, claim or claims against any party hereto.

## **XII. ENTIRE AGREEMENT.**

This Agreement contains the entire agreement and understanding between the Municipality and the Contractor, and there are no other terms, obligations, covenants, representations, or statements or conditions, oral or otherwise, of any kind whatsoever, except as to related documents referred to herein or which are Exhibits hereto. No extension or indulgence granted by either the Municipality or the Contractor; no alteration, change or modification of this Agreement consented to or agreed to by any party; and no act or omission of any party or its agents shall constitute an amendment to, or modification of, this Agreement (nor shall same be interposed as a defense against the enforcement of any party's rights under this Agreement or give rise to an implied waiver of any rights or any equitable estoppel); rather, this Agreement may be modified or amended only by a document in writing which is duly executed by the Municipality and the Contractor. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective legal representatives, successors and permitted assigns.

### **XIII. NOTIFICATION.**

All notices, demands or other communications permitted or required herein to be given by any party to the others shall be in writing and shall be postage prepaid, return receipt requested, or personally delivered.

In the case of the Municipality, notice to designated parties shall be sent as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In the case of the Contractor, notice to designated parties shall be sent as follows:

TBE-Montgomery, LLC  
Attention: James W. Taylor, Jr.  
340 Neelytown Road  
Montgomery, NY 12549

\_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notice shall be sent to such other person or persons and/or addresses as the parties may from time designate in writing to each other.

### **XIV. AUDIT.**

The Contractor shall maintain during the time this Agreement is effective and retain not less than two years after completion thereof, or for such longer period as may be required by law, complete and accurate records of wastes processed by the Contractor at the Facility Site under this Agreement, and the Municipality shall have the right, at any reasonable time, to inspect and audit project records by authorized representatives of its own, or of any public accounting firm it selects. The records to be thus maintained and retained by the

Contractor shall include, without limitation, accounting records of the amounts of all solid waste and hazardous waste, identified by source, delivered to the Facility Site.

## **XV. AFFIRMATIVE ACTION, EMPLOYMENT POLICY.**

**15.01 AFFIRMATIVE ACTION.** The Contractor shall have an affirmative action plan at the facilities operated by it pursuant to this Agreement.

**15.02 DISCRIMINATION IN EMPLOYMENT.** The Contractor agrees that in the performance of this Agreement with the Municipality, it will not discriminate against any worker because of race, creed, color, religion, national origin, handicap or sex, in violation of any applicable federal, state and local laws and regulations.

## **XVI. MISCELLANEOUS PROVISIONS.**

**16.01 MULTIPLE COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or the terms hereof to produce or account for more than one of such Counterparts provided that the counterpart produced bears the signature of the party sought to be bound.

**16.02 GOVERNING LAW; INTERPRETATION.** This Agreement shall be governed, construed, interpreted and enforced, in all respects, in accord with the laws of the State of New York. Any approval, consent or affirmation required by any party under the terms of this Agreement shall not be unreasonably withheld. The parties hereto agree that each party will perform its obligations and enforce its rights hereunder in good faith. No right, benefit or obligation of the Contractor under this Agreement may be materially and adversely affected by ordinance, regulation or other legislation of the Municipality unless (a) such regulation involves the health and safety of its residents, or (b) the economic effect of such legislation is, as part of such legislation, reflected in an amendment hereto that makes the Contractor whole.

**16.03 SEVERABILITY.** The headings used in this Agreement are solely for ease of reference and shall not be considered in the interpretation or construction of this Agreement. In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, or supplemented, or otherwise affected by such action, remain in full force and effect. Without limiting the foregoing provision, the parties agree that in the event this Agreement is determined by a court of law to be franchise, then the term of the Agreement shall be deemed to be the maximum franchise term legally permissible.

**16.04 BINDING EFFECT.** This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

## 16.05 ASSIGNMENT.

(a) The Contractor shall have the right at any time to assign this Agreement and the Contractor's rights hereunder to an affiliated entity, including, without limitation, to a corporation whose shareholders include the Contractor, its partners or other entities affiliated with the Contractor or to a general or limited partnership whose general partners include the Contractor, its partners or other entities affiliated with the Contractor. Upon the Contractor's execution of any such assignment and delivery of notice of such assignment to the Municipality, such assignee shall be deemed to be the "Contractor" for all purposes of this Agreement. The Contractor shall also have the right to collaterally assign this Agreement to a Credit Institution. In the event of any permitted assignment, the Municipality shall certify, if required, that such assignment is permitted and accepted.

(b) Except as set forth in paragraph (a), the Contractor may not assign this Agreement without the prior written consent of the Municipality. This Agreement may not be assigned by the Municipality without the prior written consent of the Contractor. No assignment shall relieve any party of any of its obligations under any provision of this Agreement.

**16.06 FAILURE OR INDULGENCE NOT WAIVERS; CUMULATIVE REMEDIES.** Except as expressly provided herein, no failure to exercise and no delay in exercising any right, power or remedy hereunder on the part of either party shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any Event of Default other than the Event of Default specified in such waiver; and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided therein by the waiving party. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. All the rights, powers and remedies of any party shall be cumulative and shall be in addition to any and all other rights, powers and remedies provided at law, in equity, by statute or otherwise, except as expressly limited in this Agreement. The exercise of any right, power or remedy by any party shall not in any way constitute a cure or waiver of any Event of Default by the other parties, or prejudice such party in the exercise of any of its rights, powers or remedies.

**16.07 FURTHER ASSURANCES.** The Municipality and the Contractor each shall use all reasonable efforts to provide such information, execute such further instruments and documents and take such actions, not inconsistent with the provisions of this Agreement and not involving the assumption of obligations or liabilities in excess of or in addition to those expressly provided for in this Agreement, as may be reasonably requested by the other parties to carry out the intent of this Agreement.



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year set forth below.

[NAME OF MUNICIPALITY]

\_\_\_\_\_

By: \_\_\_\_\_  
Name

\_\_\_\_\_  
Title:

TBE-Montgomery, LLC

By: \_\_\_\_\_  
James W. Taylor, Jr.

\_\_\_\_\_  
Title: President

DATE: April \_\_, 2011

**SCHEDULE I**  
**[RESERVED]**

## **SCHEDULE 2**

### **WASTE DISPOSAL OPERATIONS**

1. Project Operating Standards shall include all rules and regulations posted by the Contractor, all rules and regulations issued by the New York State Department of Environmental Conservation, and all local rules and regulations issued by the Municipality.

RESOLUTION NO.: 122 2011

OF

JUNE 20, 2011

RESOLUTION AMENDING RESOLUTION NO: 264-2010,  
THE AMENDED 2011 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK  
TO TRANSFER \$10,765.00 FROM CONTINGENCY  
TO TAX COLLECTOR TO FUND PAYROLL FOR MARIE GIDA  
TO CONTINUE AS PART-TIME CASHIER

BE IT RESOLVED, that Resolution No: 264-2010, the 2011 Amended Budget of the City of Newburgh, is hereby amended as follows:

	<u>Decrease</u>	<u>Increase</u>
Contingency A.1900.1990	\$10,765.00	
Tax Collector Temporary Employee A.1330.0110		\$10,765.00

RESOLUTION NO.: 123 - 2011

OF

JUNE 20, 2011

RESOLUTION AMENDING RESOLUTION NO: 264-2010,  
THE AMENDED 2011 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK  
TO TRANSFER \$8,225.00 FROM CONTINGENCY  
TO VARIOUS CITY DEPARTMENTS TO PROVIDE  
FOR TELEPHONE MAINTENANCE AGREEMENTS

BE IT RESOLVED, that Resolution No: 264-2010, the 2011 Amended Budget of the City of Newburgh, is hereby amended as follows:

	<u>Decrease</u>	<u>Increase</u>
Contingency A.1900.1990	\$8,225.00	
Public Works		
Telephone A.5010.0421		\$3,600.00
Historian		
Telephone A.7510.0421		\$ 200.00
Youth Services		
Telephone A.7310.0421		\$3,400.00
Records Management		
Telephone A.1460.0421		\$ 400.00
Recreation		
Telephone A.7140.0421		\$ 625.00
Total Increase:		\$8,225.00

RESOLUTION NO.: 124 - 2011

OF

JUNE 20, 2011

A RESOLUTION AUTHORIZING THE CITY MANAGER TO  
EXECUTE AN AGREEMENT WITH IKON OFFICE SOLUTIONS, INC.  
TO LEASE A RICOH COPIER  
AT THE COST OF \$199.55 PER MONTH FOR 48 MONTHS

WHEREAS, the Department of Public Works wishes to enter into a lease from IKON Office Solutions, Inc. for a RICOH MP2851SP copier; and

WHEREAS, the cost of the copier is \$199.55 per month for a period of 48 months; and

WHEREAS, a copy of the contract is attached hereto and made a part of this resolution;  
and

WHEREAS, this Council has reviewed such contract and has determined that it is in the best interests of the City of Newburgh to enter into such contract;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into the attached 48-month lease contract with IKON Office Solutions to provide a new RICOH MP2851SP copier for use by the Department of Public Works at the cost of \$199.55 a month for 48 months, such funds to be derived from Department of Public Works Budget Line A.5010.0448.



Document Efficiency  
At Work.®

A RICOH COMPANY

Product Schedule Number: \_\_\_\_\_

State and Local Government Master Agreement Number: \_\_\_\_\_

This Image Management Plus Product Schedule ("Schedule") is made part of the State and Local Government Master Agreement ("Master Agreement") identified on this Schedule between IKON Office Solutions, Inc. ("we" or "us") and Newburgh, City of as Customer ("Customer" or "you"). All terms and conditions of the Master Agreement are incorporated into this Schedule and made a part hereof. It is the intent of the parties that this Schedule be separately enforceable as a complete and independent agreement, independent of all other Schedules to the Master Agreement.

### CUSTOMER INFORMATION

Newburgh, City of				Richard Herbek			
Customer (Bill To) 88 Pierces Road Department of Public Works				Billing Contact Name 83 Broadway 2nd Floor			
Product Location Address Newburgh Orange NY 12550				Billing Address (if different from location address) Newburgh Orange NY 12550			
City		County		State		Zip	
Billing Contact Telephone Number 845-569-7301				Billing Contact Facsimile Number 845-569-7370		Billing Contact E-Mail Address rherbek@cityofnewburgh-ny.gov	

### PRODUCT DESCRIPTION ("Product")

Qty	Product Description: Make & Model
1	Ricoh MP2851SP Copier

Qty	Product Description: Make & Model

### PAYMENT SCHEDULE

Minimum Term (months)
48

Minimum Payment (Without Tax)
\$ 199.55

Minimum Payment Billing Frequency
<input checked="" type="checkbox"/> Monthly
<input type="checkbox"/> Quarterly
<input type="checkbox"/> Other: _____

Advance Payment
<input type="checkbox"/> 1 <sup>st</sup> Payment
<input type="checkbox"/> 1 <sup>st</sup> & Last Payment
<input type="checkbox"/> Other: _____

Guaranteed Minimum Images**	
Black/White	Color
6000	0

Cost of Additional Images*	
Black/White	Color
.0111	0

Meter Reading/Billing Frequency
<input type="checkbox"/> Monthly
<input checked="" type="checkbox"/> Quarterly
<input type="checkbox"/> Other: _____

\* Based upon Minimum Payment Billing Frequency

\*\* Based upon standard 8 1/2" x 11" paper size. Paper sizes greater than 8 1/2" x 11" may count as more than one image.

Sales Tax Exempt: ☒ YES (Attach Exemption Certificate) Customer Billing Reference Number (P.O. #, etc.) \_\_\_\_\_  
Addendum(s) attached: ☐ YES (check if yes and indicate total number of pages: \_\_\_\_\_)

### TERMS AND CONDITIONS

- The first Payment will be due on the Effective Date.
- You, the undersigned Customer, have applied to us to use the above-described items ("Product") for lawful commercial (non-consumer) purposes. **THIS IS AN UNCONDITIONAL, NON-CANCELABLE AGREEMENT FOR THE MINIMUM TERM INDICATED ABOVE.** If we accept this Schedule, you agree to use the above Product on all the terms hereof, including the Terms and Conditions on the Master Agreement. **THIS WILL ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS SCHEDULE AND THE MASTER AGREEMENT AND HAVE RECEIVED A COPY OF THIS SCHEDULE AND THE MASTER AGREEMENT.**

1-888-ASK IKON · www.ikon.com

SLG PS-IMP 04.11

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Customer Initials

Page 1 of 2

3. **Image Charges/Meters:** In return for the Minimum Payment, you are entitled to use the number of Guaranteed Minimum Images as specified in the Payment Schedule of this Schedule. The Meter Reading/Billing Frequency is the period of time (monthly, quarterly, etc.) for which the number of images used will be reconciled. If you use more than the Guaranteed Minimum Images during the selected Meter Reading/Billing Frequency period, you will pay additional charges at the applicable Cost of Additional Images as specified in the Payment Schedule of this Schedule for images, black and white and/or color, which exceed the Guaranteed Minimum Images ("Additional Images"). The charge for Additional Images is calculated by multiplying the number of Additional Images times the applicable Cost of Additional Images. The Meter Reading/Billing Frequency may be different than the Minimum Payment Billing Frequency as specified in the Payment Schedule of this Schedule. You will provide us or our designee with the actual meter reading(s) by submitting meter reads electronically via an automated meter read program, or in any other reasonable manner requested by us or our designee from time to time. If such meter reading is not received within seven (7) days of either the end of the Meter Reading/Billing Frequency period or at our request, we may estimate the number of images used. Adjustments for estimated charges for Additional Images will be made upon receipt of actual meter reading(s). Notwithstanding any adjustment, you will never pay less than the Minimum Payment.

4. Additional Provisions (if any) are: \_\_\_\_\_

THE PERSON SIGNING THIS SCHEDULE ON BEHALF OF THE CUSTOMER REPRESENTS THAT HE/SHE HAS THE AUTHORITY TO DO SO.

<p><b>CUSTOMER</b></p> <p>By: <b>X</b> _____  Authorized Signer Signature</p> <p>Printed Name: <u>Richard Herbek</u></p> <p>Title: <u>Acting City Manager</u> Date: <u>6/9/11</u></p>	<p>Accepted by: <b>IKON OFFICE SOLUTIONS, INC.</b></p> <p>By: _____  Authorized Signer Signature</p> <p>Printed Name: _____</p> <p>Title: _____ Date: _____</p>
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**IKON OFFICE SOLUTIONS, INC.**  
**IMAGE MANAGEMENT PLUS COMMITMENTS**

The below service commitments (collectively, the "Service Commitments") are brought to you by IKON Office Solutions, Inc., an Ohio corporation having its principal place of business at 70 Valley Stream Parkway, Malvern, PA 19355 ("IKON"), and a wholly owned subsidiary of Ricoh Americas Corporation. The words "you" and "your" refer to you, our customer. You agree that IKON alone is the party to provide all of the services set forth below and is fully responsible to you, the customer, for all of the Service Commitments. The Service Commitments are only applicable to the equipment ("Product") described in the Image Management Plus Product Schedule to which these Service Commitments are attached, excluding facsimile machines, single-function and wide-format printers and production units. The Service Commitments are effective on the date the Product is accepted by you and apply during IKON's normal business hours, excluding weekends and IKON recognized holidays. They remain in effect for the Minimum Term so long as no ongoing default exists on your part.

**TERM PRICE PROTECTION**

The Image Management Minimum Payment and the Cost of Additional Images, as described on the Image Management Plus Product Schedule, will not increase in price during the Minimum Term of the Image Management Plus Product Schedule, unless agreed to in writing and signed by both parties.

**PRODUCT SERVICE AND SUPPLIES**

IKON will provide full coverage maintenance services, including replacement parts, drums, labor and all service calls, during Normal Business Hours. "Normal Business Hours" are between 8:00 a.m. and 5:00 p.m., Monday to Friday excluding public holidays. IKON will also provide the supplies required to produce images on the Product covered under the Image Management Plus Product Schedule (other than non-metered product and soft-metered product). The supplies will be provided according to manufacturer's specifications. Optional supply items such as paper and transparencies are not included.

**RESPONSE TIME COMMITMENT**

IKON will provide a quarterly average response time of 2 to 6 business hours for all service calls located within a 30-mile radius of any IKON office, and 4 to 8 business hours for service calls located within a 31-60 mile radius for the term of the Image Management Plus Product Schedule. Response time is measured in aggregate for all Product covered by the Image Management Plus Product Schedule.

**UPTIME PERFORMANCE COMMITMENT**

IKON will service the Product to be Operational with a quarterly uptime average of 96% during Normal Business Hours, excluding preventative and interim maintenance time. Downtime will begin at the time you place a service call to IKON and will end when the Product is again Operational. You agree to make the Product available to IKON for scheduled preventative and interim maintenance. You further agree to give IKON advance notice of any critical and specific uptime needs you may have so that IKON can schedule with you interim and preventative maintenance in advance of such needs. As used in these Service Commitments "Operational" means substantial compliance with the manufacturer's specifications and/or performance standards and excludes customary end-user corrective actions.

**IMAGE VOLUME FLEXIBILITY AND PRODUCT ADDITIONS**

At any time after the expiration of the initial ninety day period of the original term of the Image Management Plus Product Schedule to which these Service Commitments relate, IKON will, upon your request, review your image volume. If the image volume has moved upward or downward in an amount sufficient for you to consider an alternative plan, IKON will present pricing options to conform to a new image volume. If you agree that additional product is required to satisfy your increased image volume requirements, IKON will include the product in the pricing options. The addition of product and/or increases/decreases to the Guaranteed Minimum Images requires an amendment ("Amendment") to the Image Management Plus Product Schedule that must be agreed to and signed by both you and IKON. The term of the Amendment may not be less than the remaining term of the existing Image Management Plus Product Schedule but may extend the remaining term of the existing Image Management Plus Product Schedule for up to an additional 60 months. Adjustments to the Guaranteed Minimum Images commitment and/or the addition of product may result in a higher or lower minimum payment. Images decreases are limited to 25% of the Guaranteed Minimum Images in effect at the time of Amendment.

**PRODUCT AND PROFESSIONAL SERVICES UPGRADE OPTION**

At any time after the expiration of one-half of the original term of the Image Management Plus Product Schedule to which these Service Commitments relate, you may reconfigure the Product by adding, exchanging, or upgrading to an item of Product with additional features or enhanced technology. A new Image Management Plus Product Schedule or Amendment must be agreed to and signed by you and IKON for a term not less than the remaining term of the existing Image Management Plus Product Schedule but may, in the case of an amendment, extend the remaining term of the existing Image Management Plus Product Schedule for up to an additional 60 months. The Image Management Cost of Additional Images and the Minimum Payment of the new Image Management Plus Product Schedule or Amendment will be based on any obligations remaining on the Product, the added product and new image volume commitment. Your IKON Account Executive will be pleased to work with you on a Technology Refresh prior to the end of your Image Management Plus Product Schedule or Amendment.

**PERFORMANCE COMMITMENT**

IKON is committed to performing these Service Commitments and agrees to perform its services in a manner consistent with the applicable manufacturer's specifications. If IKON fails to meet any Service Commitments and in the unlikely event that IKON is not able to repair the Product in your office, IKON, at IKON's election, will provide to you either the delivery of a temporary loaner, for use while the Product is being repaired at IKON's service center, or IKON will replace such Product with comparable Product of equal or greater capability at no additional charge. These are the exclusive remedies available to you under the Image Management Plus Commitments. Customer's exclusive remedy shall be for IKON to re-perform any Services not in compliance with this warranty and brought to IKON's attention in writing within a reasonable time, but in no event more than thirty (30) days after such Services are performed. If you are dissatisfied with IKON's performance, you must send a registered letter outlining your concerns to the address specified below in the "Quality Assurance" section. Please allow 30 days for resolution.

**ACCOUNT MANAGEMENT**

Your IKON sales professional will, upon your request, be pleased to review your product performance metrics on a quarterly basis and at a mutually convenient date and time. IKON will follow up within 8 business hours of a call or e-mail to one of our account management team members requesting a metrics review. IKON will, upon your request, be pleased to annually review your business environment and discuss ways in which we may improve efficiencies and reduce costs relating to your document management processes.

**QUALITY ASSURANCE**

Please send all correspondence relating to the Service Commitments via registered letter to the Quality Assurance Department located at: 3920 Arkwright Road, Macon, GA 31210, Attn: Quality Assurance. The Quality Assurance Department will coordinate resolution of any performance issues concerning the above Service Commitments with your local IKON office. If either of the Response Time or Uptime Performance Commitments is not met, a one-time credit equal to 3% of your Minimum Payment invoice total will be made available upon your request. Credit requests must be made in writing via registered letter to the address above. IKON is committed to responding to any questions regarding invoiced amounts for the use of the Product relating to the Product Schedule within a two (2) day timeframe. To ensure the most timely response please call 1-888-ASK-IKON.

**MISCELLANEOUS**

These Service Commitments do not cover repairs resulting from misuse (including without limitation improper voltage or environment or the use of supplies that do not conform to the manufacturer's specifications), subjective matters (such as color reproduction accuracy) or any other factor beyond the reasonable control of IKON. IKON and you each acknowledge that these Service Commitments represent the entire understanding of the parties with respect to the subject matter hereof and that your sole remedy for any Service Commitments not performed in accordance with the foregoing is as set forth under the section hereof entitled "Performance Commitment". The Service Commitments made herein are service and/or maintenance warranties and are not product warranties. Except as expressly set forth herein, IKON makes no warranties, express or implied, including any implied warranties of merchantability, fitness for use, or fitness for a particular purpose. Neither party hereto shall be liable to the other for any consequential, indirect, punitive or special damages. Customer expressly acknowledges and agrees that, in connection with the security or accessibility of information stored in or recoverable from any Product provided or serviced by IKON, Customer is solely responsible for ensuring its own compliance with legal requirements or obligations to third parties pertaining to data security, retention and protection. To the extent allowed by law Customer shall indemnify and hold harmless IKON and its subsidiaries, directors, officers, employees and agents from and against any and all costs, expenses, liabilities, claims, damages, losses, judgments or fees (including reasonable attorneys' fees) arising from its failure to comply with any such legal requirements or obligations. These Service Commitments shall be governed according to the laws of the Commonwealth of Pennsylvania without regard to its conflicts of law principles. These Service Commitments are not assignable by the Customer. Unless otherwise stated in your Implementation Schedule, your Product will ONLY be serviced by an "IKON Certified Technician". You acknowledge and agree that, in connection with its performance of its obligations under these Service Commitments, IKON may place automated meter reading units on imaging devices, including but not limited to the Product, at your location in order to facilitate the timely and efficient collection of accurate meter read data on a monthly, quarterly or annual basis. IKON agrees that such units will be used by IKON solely for such purpose. Once transmitted, all meter read data shall become the sole property of IKON and will be utilized for billing purposes.

IN WITNESS WHEREOF, each party has caused its duly authorized officer to execute these Image Management Plus Commitments as of

20

**CUSTOMER**

By:

Name: Richard Herbek

Title: Acting City Manager

Date: 6/9/11

**IKON OFFICE SOLUTIONS, INC.**

By:

Name:

Title:

Date:

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## Work Order - US IKON Office Solutions, INC.

Base Eq Model #	Base Eq Serial #	Email Address of PS Rep	Date of Services:
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Customer must already be an IKON customer to use this form without being part of the SFP

Bill To Cust No.: \_\_\_\_\_ Pymt Method: \_\_\_\_\_ Ship To Customer No.: \_\_\_\_\_ PO No.: \_\_\_\_\_ PO Date: \_\_\_\_\_  
 Bill To Customer: Newburgh, City of Ship To Customer: Newburgh, City of  
 Address: 83 Broadway, 2nd Floor Address: 88 Pierces Road Department of Public Works  
 City: Newburgh State: NY Zip: 12550 City: Newburgh State: NY Zip: 12550  
 Customer Contact: Glenn Kurcon Title: IS Manager Phone: 845.569.7324  
 IKON Sales Rep: Jim Riker Phone: 845.220.5026 SC-C: \_\_\_\_\_ SA/SSA: \_\_\_\_\_  
 MPS/FSM/SAM/SAC: \_\_\_\_\_ SC: \_\_\_\_\_

### Description of Services

Professional Services Provided - 1st Task			Professional Services Provided - 2nd Task		
Connect Svc Tech - Segment 2 (21 to 30 ppm)			Installation - Ricoh Basic Scan (Scan to Folder/eMail)		
<ul style="list-style-type: none"><li>o Design and perform solution implementation plan</li><li>o Install and configure printer interface</li><li>o Assist customer in connecting to their network</li><li>o Install and setup print drivers/PPDs on up to two (2) workstations</li><li>o Printer operator training for lead operator / administrator</li><li>o End user training for print drivers/PPDs for up to two (2) persons</li></ul>			<ul style="list-style-type: none"><li>o Design and perform solution implementation plan</li><li>o Installation and configuration for 5 users</li><li>o Administrator training</li><li>o Key Operator training</li><li>o End User training</li></ul>		
			</		

This Work Order shall be effective as of the date of execution by both IKON and Customer. By signing below, the undersigned represent that they are duly authorized to enter into this Work Order on behalf of their respective entities.

CUSTOMER		IKON OFFICE SOLUTIONS, INC.	
By:		By:	
Name:		Name:	
Title:		Title:	
Date:		Date:	

### TERMS AND CONDITIONS

The performance by IKON of the Services described in this Work Order is subject to and shall be governed solely by the following terms and conditions:

Customer engages IKON to perform the services described in this Work Order (the "Services"). Changes to the scope of the Services shall be made only in a written change order signed by both parties. IKON shall have no obligation to commence work in connection with any change until the fee and/or schedule impact of the change and all other applicable terms are agreed upon by both parties in writing. IKON shall provide the Services at the Customer location set forth herein or on a remote basis. In consideration of its Services hereunder, Customer shall pay IKON the Service fees in the amounts and at the rates set forth above. Customer shall pay all amounts payable to IKON hereunder within thirty (30) days of the date of the invoice submitted by IKON. If IKON undertakes collection or enforcement efforts, Customer shall be liable for all costs thereof, including, without limitation, reasonable attorneys' fees and late charges. IKON may suspend or terminate Services for non-payment. Customer shall be responsible for payment of any applicable taxes arising in connection with the transactions contemplated hereby (other than with respect to the income of IKON). Customer shall provide IKON with such access to its facilities, networks and systems as may be reasonably necessary for IKON to perform its Services. Customer acknowledges that IKON's performance of the Services is dependent upon Customer's timely and effective performance of its responsibilities hereunder. Unless connectivity services are specifically identified in the Task and Description section of this Work Order as part of the Services to be performed by IKON, IKON shall have no obligation to perform and no responsibility for the connection of any hardware or software to any Customer network or system.

IKON shall perform its Services in a professional manner. IKON is not the manufacturer of any of the software, tools and/or products utilized in connection with this Work Order. IKON shall, however, make available to Customer any warranties made to IKON by the manufacturers of the software, tools and/or products utilized by IKON in connection with its Services hereunder, to the extent transferable and without recourse. If Customer has engaged IKON to provide Customer tools to assist Customer in Data Management Services that relate to the security or accessibility of information stored in or recoverable from any devices provided or serviced by IKON, including but not limited to any hard drive removal, cleansing or formatting services of any kind, Customer expressly acknowledges and agrees that (i) it is aware of the security alternatives available to it, (ii) it has assessed such alternatives and exercised its own independent judgment in selecting the Data Management Services and determined that such Data Management Services are appropriate for its needs and compliance, (iii) IKON does not provide legal advice with respect to information security or represent or warrant that its Data Management Services or products are appropriate for Customer's needs or that such Data Management Services will guarantee or ensure compliance with any law, regulation, policy, obligation or requirement that may apply to or affect Customer's business, information retention strategies and standards, or information security requirements. Additionally, Customer expressly acknowledges and agrees that, (a) Customer is responsible for ensuring its own compliance with legal requirements pertaining to data retention and protection, (b) it is the Customer's sole responsibility to obtain advice of competent legal counsel as to the identification and interpretation of any relevant laws and regulatory requirements that may affect the Customer's business or data retention, and any actions required to comply with such laws, and (c) the selection, use and design of any Data Management Services, and any and all decisions arising with respect to the deletion or storage of any data, as well as any loss, or presence, of data resulting therefrom, shall be the sole responsibility of Customer, and Customer shall indemnify and hold harmless IKON and its subsidiaries, directors, officers, employees and agents from and against any and all costs, expenses, liabilities, claims, damages, losses, judgments or fees (including reasonable attorneys' fees) arising therefrom or related thereto. EXCEPT AS EXPRESSLY SET FORTH HEREIN, IKON MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, IN CONNECTION WITH THIS WORK ORDER AND THE TRANSACTIONS CONTEMPLATED HEREBY. IN NO EVENT SHALL IKON BE LIABLE TO CUSTOMER FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS ARISING OUT OF OR RELATED TO THIS WORK ORDER OR THE PERFORMANCE OR BREACH HEREOF, EVEN IF IKON HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. IKON'S LIABILITY TO CUSTOMER HEREUNDER, IF ANY, SHALL IN NO EVENT EXCEED THE TOTAL OF THE FEES PAID TO IKON HEREUNDER BY CUSTOMER. IN NO EVENT SHALL IKON BE LIABLE TO CUSTOMER FOR ANY DAMAGES RESULTING FROM OR RELATED TO ANY FAILURE OF THE SOFTWARE, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA, OR DELAY OF DELIVERY OF SERVICES UNDER THIS WORK ORDER. IKON ASSUMES NO OBLIGATION TO PROVIDE OR INSTALL ANY ANTI-VIRUS OR SIMILAR SOFTWARE AND THE SCOPE OF SERVICES CONTEMPLATED HEREBY DOES NOT INCLUDE ANY SUCH SERVICES.

Except for purposes of this Work Order, IKON shall not use or disclose any proprietary or confidential Customer data derived from its Services hereunder; provided, however, that IKON may use general statistics relating to the Service engagement so long as it does not disclose the identity of Customer or make any reference to any information from which the identity of Customer may be reasonably ascertained. Customer agrees that during the term of the Services and for a period of one (1) year after termination thereof, it shall not directly or indirectly solicit, hire or otherwise retain as an employee or independent contractor any employee of IKON that is or was involved with or part of the Services. This Work Order represents the entire agreement between the parties relating to the subject matter hereof and supersedes all prior understandings, writings, proposals, representations or communications, oral or written, of either party. This Work Order may be amended only in writing executed by the authorized representatives of both parties. Any purchase order, service order or other Customer ordering document will not modify or affect this Work Order, nor have any other legal effect, and shall serve only the purpose of identifying the service ordered. This Work Order may not be transferred or assigned by Customer without the prior written consent of IKON. This Work Order shall be interpreted in accordance with the substantive laws of the Commonwealth of Pennsylvania, without regard to principles of conflicts of law. The relationship of the parties is that of independent contractors. IKON shall not be responsible for and shall be excused from performance or have reasonable additional periods of time to perform its obligations where it is delayed or prevented from performing any of its obligations for reasons beyond IKON's reasonable control, including, without limitation, acts of God, natural disasters, labor disputes, strikes or unavailability of services, personnel or materials. This Work Order is separately enforceable as a complete and independent binding agreement, independent of all other Work Orders, if any. By signing, the Customer acknowledges and accepts the terms and conditions of this Work Order, and confirms that the undersigned has the necessary power and authority to enter into this Work Order on behalf of Customer.

RESOLUTION NO.: 125 - 2011

OF

JUNE 20, 2011

RESOLUTION AMENDING RESOLUTION NO: 264-2010,  
THE AMENDED 2011 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK  
TO TRANSFER \$200.00 FROM WATER CONTINGENCY  
TO PURIFICATION TO PROVIDE FOR A TELEPHONE MAINTENANCE AGREEMENT

BE IT RESOLVED, that Resolution No: 264-2010, the 2011 Amended Budget of the City of Newburgh, is hereby amended as follows:

	<u>Decrease</u>	<u>Increase</u>
Water Contingency F.1900.1990	\$200.00	
Purification Telephone F.8330.0421		\$200.00

RESOLUTION NO.: 126 - 2011

OF

JUNE 20, 2011

RESOLUTION AMENDING RESOLUTION NO: 264-2010,  
THE AMENDED 2011 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK  
TO TRANSFER \$1,300.00 FROM SEWER CONTINGENCY  
TO THE WASTE WATER TREATMENT PLANT  
TO PROVIDE FOR A TELEPHONE MAINTENANCE AGREEMENT

BE IT RESOLVED, that Resolution No: 264-2010, the 2011 Amended Budget of the City of Newburgh, is hereby amended as follows:

	<u>Decrease</u>	<u>Increase</u>
Sewer Contingency G.1900.1990	\$1,300.00	
Waste Water Treatment Plant Telephone G.8130.0421		\$1,300.00

RESOLUTION NO.: 127 - 2011

OF

JUNE 20, 2011

RESOLUTION AMENDING RESOLUTION NO: 264-2010,  
THE AMENDED 2011 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK  
TO TRANSFER \$46,800.00 FROM CONTINGENCY  
TO COMPTROLLER TO FUND CONSULTING  
SERVICES FOR J. DWIGHT HADLEY, CPA

BE IT RESOLVED, that Resolution No: 264-2010, the 2011 Amended Budget of the City of Newburgh, is hereby amended as follows:

		<u>Decrease</u>	<u>Increase</u>
Contingency	A.1900.1990	\$46,800.00	
Comptroller Consultant Services	A.1315.0455		\$46,800.00

RESOLUTION NO.: 128 - 2011

OF

JUNE 20, 2011

RESOLUTION SCHEDULING A PUBLIC HEARING  
FOR JULY 11, 2011 TO HEAR PUBLIC COMMENT  
REGARDING THE HOUSING AND COMMUNITY DEVELOPMENT  
NEEDS OF THE CITY OF NEWBURGH IN ORDER TO ASSIST  
IN THE PREPARATION OF ITS HOUSING AND COMMUNITY  
DEVELOPMENT PLAN FOR FISCAL YEAR 2012

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that there is hereby scheduled a public hearing to receive comments regarding the housing and community development needs of the City of Newburgh in order to assist in the preparation of its Housing and Community Development Plan for fiscal year 2012; and that such public hearing be and hereby is duly set for the next regular meeting of the Council to be held at 7:00 p.m. on the 11<sup>th</sup> day July 2011 in the third floor Council Chambers located at 83 Broadway, City Hall, Newburgh, New York



3b

**City of Newburgh**  
DEPARTMENT OF PLANNING & DEVELOPMENT  
City Hall – 83 Broadway  
Newburgh, New York 12550

TEL: (845) 569-9400

FAX: (845) 569-9700

June 6, 2011

**TO:** The Honorable Mayor Valentine and Members of City Council

**FROM:** Edward Lynch, Director of Planning and Development *ELynch*  
Courtney Kain, Director of Community Development *CK*

**CC:** Richard Herbek, Acting City Manager

**RE** Proposed Amendments to the CDBG Consolidated Plan- 2011 Budget

The City of Newburgh has received the final award amount from the U.S. Department of Housing and Urban Development of \$768,205. Additionally, staff conducted a program income audit and expects a \$30,000 reduction in income in 2011. Both reductions in revenue total \$121,795. Therefore, with the 2011 entitlement award, projected program income, and the previously allocated 2009 and 2010 funds, the total budget for 2011 is \$1,332,747.

Programmatic amendments include the following.

- ☐ Eliminate funding for the **Housing Counseling Services** (\$100,000) and the Brush with Kindness Program (\$50,000).
- ☐ Reduce the **Sidewalk/ Street Improvement Project** from \$350,000 to \$200,000.
- ☐ Increase funding for **Demolition** from \$50,000 to \$203,205
- ☐ Increase funding for **Youth Violence Reduction/ Promising Neighborhoods Program** from \$50,000 to \$75,000

As such, the proposed Amended Budget is as follows:

<b><u>Budget Item</u></b>	<b><u>Original Budget</u></b>	<b>Amended Proposal</b>
<b>Administration</b>	<b>\$170,866</b>	<b>\$ 170,866</b>
<b>In Rem Stabilization Program</b>	<b>\$153,676</b>	<b>\$ 153,676</b>
<b>Rental Housing Activities</b>	<b>\$165,000</b>	<b>\$ 165,000</b>
<b>Housing Services</b>	<b>\$100,000</b>	<b>\$ 0</b>
<b>A Brush With Kindness</b>	<b>\$50,000</b>	<b>\$ 0</b>
<b>Housing Rehabilitation</b>	<b>\$200,000</b>	<b>\$ 200,000</b>
<b>Demolition</b>	<b>\$50,000</b>	<b>\$ 203,205</b>
<b>Sidewalk/ Street Improvement Project</b>	<b>\$350,000</b>	<b>\$ 200,000</b>
<b>Small Business Rental Subsidy</b>	<b>\$30,000</b>	<b>\$ 30,000</b>
<b>Small Business Loans</b>	<b>\$50,000</b>	<b>\$ 50,000</b>
<b>Promising Neighborhoods Program/ Youth</b>		
<b>Violence Reduction</b>	<b>\$50,000</b>	<b>\$ 75,000</b>
<b>Section 108 Repayment</b>	<b>\$85,000</b>	<b>\$ 85,000</b>
<b>Total</b>	<b>\$1,454,542</b>	<b>\$ 1,332,747</b>

This amendment is considered a "substantial amendment" as it requires City Council authorization. The authorization is made public by postings and public notices on the newspaper and City website. The City will receive and consider comments on substantial amendments to the Consolidated Plan for 30 days before implementing the amendments.





**City of Newburgh**  
DEPARTMENT OF PLANNING & DEVELOPMENT  
City Hall – 83 Broadway  
Newburgh, New York 12550

TEL: (845) 569-9400

FAX: (845) 569-9700

**MEMORANDUM**

June 9, 2011

To: Honorable Mayor Valentine & City Council Members

From: Ed Lynch, Director Planning & Development  
Courtney Kain, Community Development Director

**Re: 2009 CDBG Program – budget amendment – Art Bus**

Last year, the City Council funded the Artbus under Newburgh/ 20/20 – Liberty St. Business Development program. At the CDBG Advisory Committee Meeting of June 8, 2011, there was discussion by the CDBG Advisory Committee about supporting the Artbus Shuttle in 2011. This activity is an eligible CDBG activity. Funding at this level is still available and staff has no objection to the request. Total amount to be spent is \$5155.00. Below details the proposal:

**ARTBUS SHUTTLE**

**BUDGET FOR 2011 SEASON  
(17) SATURDAYS  
JULY 9 – October 29, 2011**

Bus Driver (\$15 Hr. x 5 hours x 17 weeks)	\$1,275
Tour Guides (stipend \$50 per day – priority to those who volunteered last year)	\$850
Fuel 30 gal per day x 3.50	\$1,785
Printing	\$400
Sandwich Boards (construction \$75 each x 5)	\$375
Incidentals - 10%	\$470

Additionally, below is information on the 2010 program as provided in the 2010 CAPER

*The ArtBus began operation on Saturday, June 12 and ran through October 30, 2010. The shuttle route was designed to bring people up from the bustling waterfront to tour the architectural beauty of our historic district, visit the shops on our Liberty St. commercial corridor and discover Washington's Headquarters. The overall goal of the ArtBus was to showcase art and increase visibility, position the street as a "destination" for tourists and customers and ultimately, to be part of a business development strategy, bridging the Heritage Corridor, Liberty Street, Lower Broadway and the Waterfront.*

*The Artbus got off to a slow start primarily due to obstacles with having improvements to our yellow school bus completed. An interim vehicle from the city fleet that was not esthetically pleasing was put into service initially. That vehicle was used for almost half the Saturdays and, therefore, made it difficult to build ridership. The permanent bus was finally painted and ridership increased. Another obstacle after the bus was actually painted was finding a method of exhibiting the artwork on the outside. Signage that said, "Artbus Shuttle" was affixed to the outside and that was helpful.*

*The Liberty Street/ArtBus committee has devised a method to create a changing rolling art exhibit showcasing the work of youth artists from the area. A collaboration with the non-profit, Trestle, Inc. and the Arts Department of the Newburgh Enlarged School district has been formulated to have children's artwork superimposed on metal sections to be magnetized and secured to sides of the bus. In this way the art can be rotated weekly. The concept to have the back panel of the bus reserved for paid advertising of local businesses is also part of the plan.*

*In subsequent seasons the need for a driver who possesses a CDL and a permanent crew of guides each receiving a small stipend is necessary. Securing strictly volunteer assistance over the course of 16 weeks without compensation is difficult. Recruitment and training of youth guides could also generate an earning opportunity for high school/college students. Remaining funds were reallocated into the 2011 budget.*

RESOLUTION NO: 117 - 2011

OF

JUNE 20, 2011

**A RESOLUTION AUTHORIZING AN AMENDMENT  
TO THE GRANTEE ON THE PROPERTY LOCATED AT 61 WILLIAM STREET  
(SECTION 39, BLOCK 2, LOT 29) SOLD AT THE APRIL 14, 2011 AUCTION**

WHEREAS, this Council, by Resolution No.: 80-2011 of April 25, 2011, confirmed the sale of 61 William Street (Section 39, Block 2, Lot 29) to Manny G. Pereira; and

WHEREAS, the purchaser has submitted a request to amend the grantee to his corporation entitled Newburgh Ventures Corp.; and

WHEREAS, this Council has determined that authorizing the amendment to the grantee would be in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the grantee for the property located at 61 William Street (Section 39, Block 2, Lot 29) is hereby amended from Manny G. Pereira to Newburgh Ventures Corp.

RESOLUTION NO.: 118 - 2011

OF

JUNE 20, 2011

A RESOLUTION REJECTING A  
BID RECEIVED AT THE CITY OF NEWBURGH  
APRIL 14, 2010 PROPERTY AUCTION

WHEREAS, this Council did, by Resolution No.: 39-2011, of February 15, 2011, authorize the sale of several properties at public auction; and

WHEREAS, said public auction was duly held on April 14, 2011;

WHEREAS, this Council has reviewed all bids and has determined that the following bid is rejected:

<u>Lot #</u>	<u>Property Address</u>	<u>S-B-L</u>	<u>Purchaser</u>	<u>Purchase Price</u>
#25	39 Lutheran Street	29-3-13	Perrault Jean-Paul	\$6,500.00; and

BE IT FURTHER RESOLVED, that the City Comptroller be and she is hereby authorized to refund the deposit and buyers premium paid by the bidder for the bid herein rejected.

RESOLUTION NO.: 119 - 2011

OF

JUNE 20, 2011

A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF  
REAL PROPERTY KNOWN AS  
154 WILLIAM STREET (SECTION 44, BLOCK 4, LOT 12)  
AT PRIVATE SALE TO STEVE SAUNDERS AND BEVERLY RANSOM  
FOR THE TOTAL AMOUNT OF \$7,758.28

WHEREAS, the City of Newburgh has acquired title to several parcels of real property by foreclosure *In Rem* pursuant of Article 11 Title 3 of the Real Property Tax Law of the State of New York; and

WHEREAS, pursuant to Section 1166 of the Real Property Tax Law the City may sell properties acquired by foreclosure *In Rem* at private sale; and

WHEREAS, the City of Newburgh desires to sell 154 William Street, being more accurately described as Section 44, Block 4, Lot 12 on the official tax map of the City of Newburgh; and

WHEREAS, the prospective buyers have offered to purchase this property at private sale for the base purchase price of \$5,000.00 plus \$2,758.28 which represents the total amount of School Taxes for the years 2008-2009, 2009-2010 and 2010-2011; and

WHEREAS, purchasers own adjacent parcel identified as 156 William Street, Section 44, Block 4, Lot 13.1 and will combine both parcels into a single tax lot within 1 year of date of conveyance; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to sell said property to the prospective buyers for the base purchase price as outlined below and subject to the Terms and Conditions of the Sale annexed hereto and made a part hereof;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchasers be and hereby is confirmed and the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchasers upon receipt of the indicated purchase price in cash, money order, good certified or bank check, made payable to THE CITY OF

NEWBURGH, such sums are to be paid on or before August 19, 2011, being sixty (60) days from the date of this resolution; and

<u>Property address</u>	<u>Section, Block, Lot</u>	<u>Purchaser</u>	<u>Base Purchase Price</u>
154 William Street	44 - 4 - 12	Steve Saunders & Beverly Ransom	\$5,000.00

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York, that the parcel is not required for public use.

## Terms and Conditions of the Sale

1. City of Newburgh acquired title to these properties in accordance with Article 11 of the Real Property Tax Law of the State of New York, and all known rights of redemption under said provisions of law have been extinguished by the tax sale proceedings and/or as a result of forfeiture.
2. For purposes of these Terms and Conditions, parcel shall be defined as a section, block and lot number.
3. All real property, including any buildings thereon, is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) water and sewer assessments are the responsibility of the purchaser, whether they are received or not; (d) easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale in which City of Newburgh acquired title; (e) 2008-2009, 2009-2010 and 2010-2011 school taxes, water rents and assessments, and sewer rents and assessments and any other applicable charges (including, but not limited to, omitted and pro rata taxes, demolition charges, interest and penalties); and (f) for purposes of taxation, the purchaser shall be deemed to be the owner prior to the next applicable taxable status date after the public auction.
4. The properties are sold subject to unpaid school taxes for the tax years of 2008-2009, 2009-2010 and 2010-2011, and also subject to all school taxes levied subsequent to the date of the City Council resolution authorizing the sale. The purchaser shall reimburse the City for any school taxes paid by the City for the tax year 2008-2009, 2009-2010 and 2010-2011 and subsequent levies up to the date of the closing. Upon the closing, the properties shall become subject to taxation. Water and sewer charges and sanitation fees will be paid by the City to the date of closing.
5. All purchasers are advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.
6. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the successful purchaser following the closing of sale.

7. All informational tools, such as slides, tax maps, deeds, photos, auction listings, auction catalogs, auction signs, property record cards, etc., are for identification purposes only and are neither a guarantee nor a warranty as to location, dimensions, parcel use and/or size, or anything else. THE CITY, THE AUCTIONEER, AND THE BROKER MAKE NO WARRANTY EXPRESSED OR IMPLIED IN CONNECTION WITH THIS SALE.
8. The City of Newburgh reserves the right, in its sole discretion, to withdraw from the auction any of the properties listed on the schedule of real property.
9. Notice is hereby given that the premises being sold may lie within a Historic District or Design District as designated upon the zoning or tax map. It is the sole responsibility of any bidder to ascertain which specific parcel(s) is so designated and sold subject to the provisions of law applicable thereto.
10. **WARNING: FAILURE TO COMPLY WITH THE TERMS OF THIS PARAGRAPH MAY RESULT IN YOUR LOSS OF THE PROPERTY AFTER PURCHASE.** The deed will contain provisions stating that the purchaser is required to rehabilitate any building on the property and bring it into compliance with all State, County and Local standards for occupancy within (18) months of the date of the deed. Within such eighteen (18) month time period the purchaser must either: obtain a Certificate of Occupancy for all buildings on the property; make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy; or demolish such buildings. The deed shall require the purchaser to schedule an inspection by City officials at or before the end of the eighteen (18) month period. If the purchaser has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy or Certificate of Compliance by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued. A written request made to the City Manager for an extension of the eighteen (18) month rehabilitation period shall be accompanied by a non-refundable fee of \$250.00 per parcel for which a request is submitted. The City Manager may, in her sole discretion and for good cause shown, grant one extension of time to rehabilitate of up to, but not to exceed, three (3) months. Any additional request thereafter shall be made in writing and placed before the City Council for their consideration.
11. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Properties may contain paint or other similar surface coating material containing lead. Purchasers shall be responsible for the correction of such conditions



when required by applicable law. Properties also may contain other environmental hazards. Purchasers shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchasers shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Bidder acknowledges receivership of the pamphlet entitled "Protecting Your Family From Lead in Your Home." Bidder also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.

12. \$500.00 shall be paid as a down payment no later than two (2) weeks from date of resolution authorizing sale. All recording costs and transfer taxes shall be paid by the purchaser. **All deposits must be in cash or guaranteed funds made payable to the "City of Newburgh Comptroller" and drawn on banks insured by the Federal Deposit Insurance Corporation (FDIC). No exceptions.**
13. All bids shall be subject to approval by the Newburgh City Council, which shall have the right, in the Council's sole discretion, to reject any bid for any reason whatsoever.
14. The entire balance of the purchase price and all closing costs/fees must be paid by cash or guaranteed funds to the City of Newburgh Comptroller's Office on or before August 19, 2011. **The City is not required to send notice of acceptance to a purchaser. If the purchaser fails to pay the balance of the purchase price as herein provided, the deposit shall be forfeited.** The City Manager may, in her sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days. No request shall be entertained unless in writing, stating the reasons therefore, and unless accompanied by a fee of \$250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and shall not be returnable. In addition, should any bidder fail to close within the time set forth above, the entire deposit shall be forfeited to the City as liquidated damages without further notice to the bidder. Any additional request made thereafter shall be made in writing and placed before the City Council for their consideration.
15. Previously defaulting parties are not allowed to bid. If a purchaser owes any outstanding and delinquent taxes to City of Newburgh, those delinquent taxes must be paid in full prior to closing on any purchases made at this auction. Failure to comply with this provision will be grounds for default and forfeiture of any deposits paid.
16. If the successful bidder fails to tender such amount due by the close of business on August 19, 2011, then, the City may, but is not obligated to offer any unsold property to the second highest bidder. All terms and conditions for the sale set forth herein above shall apply to the second highest bidder and/or any other purchaser.

17. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the successful bidder shall be entitled only to a refund of the purchase money paid with interest. Purchasers agree that they shall not be entitled to special or consequential damages, attorney's fees, reimbursement for any expenses incurred as a result of ownership, improvements of property, or for taxes paid during period of ownership, and this agreement by the purchaser is a material condition of the sale.
18. All sales shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall City of Newburgh and/or Haroff Auction & Realty and Absolute Auction & Realty be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor of the purchaser, its heirs, success or assigns, against City of Newburgh and/or Haroff Auction & Realty and Absolute Auction & Realty arising from this sale.
19. Conveyance shall be by quitclaim deed only, containing a description of the property as it appeared on the tax roll for the year upon which the City acquired title or as corrected up to date of deed. The deed will be recorded by the City upon payment in full of the purchase price, buyer's premium, and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon recording of deed.**
20. Upon closing, the City shall deliver a quitclaim deed conveying all of its right, title and interest in the subject property, which deed shall be drawn by the City Corporation Counsel. The City shall not convey its interest in any street, water, sewer or drainage easement, or any other interest the City may have in the property. The City shall only convey that interest obtained by the City pursuant to the judgment rendered in an *in rem* tax foreclosure action filed in the Orange County Clerk's Office.
21. The Purchaser is currently the owner of adjacent parcel identified as 156 William Street, Section 44, Block 4, Lot 13.1, and will combine both parcels as one lot of record within one (1) year of the date of conveyance.
22. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least thirty (30) days in advance of closing title and approved by the City's Consulting Engineer.
23. Evictions, if necessary, are solely the responsibility of the successful bidder after closing and recording of the deed.

24. The successful purchaser on each auction parcel must remove the auction sign within seven (7) days after the recording of the deed.

25. By acknowledging and executing these Terms & Conditions, the purchaser certifies that he/she is not representing the former owner(s) of the property against whom City of Newburgh foreclosed and has no intent to defraud City of Newburgh of the unpaid taxes, assessment, penalties and charges which have been levied against the property. The purchaser agrees that neither he/she nor his/her assigns shall convey the property to the former owner(s) against whom City of Newburgh foreclosed within 24 months subsequent to the auction date. If such conveyance occurs, the purchaser understands that he/she may be found to have committed fraud, and/or intent to defraud, and will be liable for any deficiency between the purchase price at auction and such sums as may be owed to City of Newburgh as related to the foreclosure on the property and consents to immediate judgment by City of Newburgh for said amounts.

ORDINANCE NO.: \_\_\_\_\_ - 2011

OF

\_\_\_\_\_, 2011

AN ORDINANCE AMENDING CHAPTER 288, "VEHICLES AND TRAFFIC"  
ARTICLE VIII ENTITLED "SCHEDULES"  
OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH

BE IT ORDAINED, by the Council of the City of Newburgh, New York that Chapter 288, "Vehicles and Traffic", Article VIII, "Schedules" be and is hereby amended to read as follows:

Section 1. Chapter 288, VEHICLES AND TRAFFIC

§ 288-61. Schedule III: School Speed Limits.

In accordance with § 288-9, no person shall drive a vehicle in excess of the speeds indicated below, in the areas designated below, during school days between the hours of 7:00 a.m. and 6:00 p.m.:

Name of Street (Reserved)	Speed Limit (mph)	Location
<u>Ann Street</u> (#345 Ann)	15	From South Robinson Avenue west .1 miles
<u>Chambers Street</u>	15	Third Street to Farrington Street
<u>Fullerton Avenue</u>	15	South Street to Roe Street
<u>Gidney Avenue</u>	15	Chambers Street to North Miller Street
<u>Gidney Avenue</u>	15	Fullerton Avenue to <u>Roe Street</u>
<u>Grand Street</u> (Grand)	15	From South Street north .1 miles (#243)

Underline denotes additions

<u>Liberty Street</u>	15	<u>Third Street to Farrington Street</u>
<u>Monument Street</u>	15	<u>Henry Avenue to Overlook Place</u>
<u>Overlook Place</u>	15	<u>Bridge Street to Monument Street</u>
<u>Robinson Avenue</u>	15	<u>Rural Lane to Cottage Street</u>
<u>South Street</u>	15	<u>Fullerton Avenue to West Street</u>
<u>South Street</u>	15	<u>Grand Street to Montgomery Street</u>
<u>South Robinson Avenue</u>	15	<u>Ann Street to Washington Street</u>
<u>Washington Street</u> <u>Washington)</u>	15	<u>From William Street west .1 miles (#267)</u>
<u>William Street</u>	15	<u>Washington Street to Hasbrouck Street</u>